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REPORT BY THE U.S.

General Accounting Office

A Case Study Of Why Some Postal Rate Commission Decisions Took As Long As They Did

The congressional expectation that the Postal Rate Commission and the Postal Service would work in harmony has not been realized. The harmonious relationship the Congress envisioned will most likely not be realized if jurisdictional disputes continue.

Under the trial-like procedures for ratemaking and classification prescribed by the Commission under the Administrative Procedure Act and the Postal Reorganizational Act, the time required to render an initial recommended decision can be lengthy, particularly in complex and controversial cases. Given the number of participants and the sheer volume of data which must be provided, even the simplest proposal can become a complex and lengthy case. It may be time for the Congress to again consider revising the system if it desires a more timely and harmonious ratemaking process.

GGD-81-96
SEPTEMBER 8, 1981

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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

GENERAL GOVERNMENT
DIVISION

B-199926

The Honorable Ted Stevens
United States Senate

Dear Senator Stevens:

This report, which was prepared in response to your May 1, 1980, request, identifies the reasons for the time required by the Postal Rate Commission to render decisions on two Postal Service mail classification proposals.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of the report. At that time we will send copies to the Postal Rate Commission, the Postal Service, and others on request.

We are available to discuss our findings and to provide any further assistance you may need.

Sincerely yours,

W.J. Anderson

William J. Anderson
Director

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GENERAL ACCOUNTING OFFICE
REPORT TO THE
HONORABLE TED STEVENS
UNITED STATES SENATE

A CASE STUDY OF WHY SOME POSTAL RATE COMMISSION DECISIONS TOOK AS LONG AS THEY DID

D I G E S T

Because of concerns over the Postal Rate Commission's protracted delays in rendering recommended decisions on two Postal Service proposals, Senator Ted Stevens requested GAO to determine whether the time required was necessary to satisfy the rights of due process of interested parties. Senator Stevens was particularly concerned with the Commission's actions in the Parcel Post case (MC78-1) and the Electronic Computer Originated Mail (E-COM) case (MC78-3). In both cases, the Commission took 15 months to make an initial recommended decision.

The formal trial-like hearings the Postal Rate Commission must hold contribute substantially to the overall length and cost of participating in Commission proceedings. As required by the Postal Reorganization Act, the Commission must, among other things, follow the Administrative Procedure Act and provide interested parties with an opportunity for a hearing on the record to make their views known on U.S. Postal Service proposals for changes in postal rates or mail classifications. The process, as established by the Commission, includes the filing of direct testimony by the Postal Service and other interested parties, written cross-examination, oral cross-examination, briefings, and rendering of a written recommended decision. (See ch. 2.)

Two recent cases consumed 15 months each before the Commission rendered its initial recommended decision. To identify the factors contributing to the length of these cases, GAO reviewed the Parcel Post and E-COM cases. (See ch. 3.)

FACTORS CONTRIBUTING TO CASE LENGTH

In the first case GAO reviewed, the Postal Service proposed to restructure the parcel post bulk subclass and offer discounts for mailers

presenting at least 50 machine processible parcels. Sixteen parties represented by 24 attorneys participated in the proceedings which resulted in 21 days of hearings and a hearing record of about 4,800 pages. (See pp. 10 to 15.) After 15 months the Commission rejected the Service's proposal. GAO's review indicated that the following factors contributed to the length of the Parcel Post proceedings:

--The Postal Service changed its testimony and objected to discovery efforts.

--The parties disagreed over the nature and scope of the case.

--Commission staff initially considered the case to be deficient, but the case was allowed to continue.

The other proposal GAO reviewed involved a new subclass of First Class Mail directed to large volume mailers. This new subclass involved the use of electronic mail technology to reduce mail processing time and transportation costs. This proposal was considered both complex and controversial. Thirty-three parties represented by 75 attorneys participated in the proceedings which resulted in 29 days of hearings and a hearing record of about 7,400 pages. (See pp. 16 to 24.) After 15 months the Commission rejected the Service's proposal and instead endorsed an alternative proposal offered by the Officer of the Commission, who represents the interests of the general public. GAO's review indicated that the following factors contributed to the length of this proceeding:

--Time-consuming consideration of the process followed by the Postal Service in selecting its telecommunications contractor.

--Extensive procedural conflicts (over collection of information) throughout the proceeding.

--Testimony revisions by a Postal Service witness.

--Consideration of the Officer of the Commission's alternative system.

OBSERVATIONS AND CONCLUSIONS

The congressional expectation that the Postal Rate Commission and the Service's Board of Governors would work as partners in establishing postal rates, fees, and classifications has not been realized. It may be time for the Congress to again consider revising the system if it desires a more timely and harmonious ratemaking process.

If such an effort is undertaken by the Congress, it should be recognized that under the trial-like procedures prescribed under the Administrative Procedure Act and the Postal Reorganization Act, the time required to render an initial recommended decision can be lengthy particularly in complex or controversial cases. Given the number of participants and the sheer volume of data which must be provided, even the simplest proposal can become a complex and lengthy case. Secondly, the harmonious working relationship the Congress envisioned will most likely not be realized if jurisdictional disputes continue.

AGENCY COMMENTS AND OUR EVALUATION

The Postal Rate Commission's Acting Chair, Commissioners Fritschler and Duffy, and the Postmaster General furnished comments on GAO's draft report. These comments are provided in full in appendices IV to VII and demonstrate existing animosities between the agencies.

Regarding GAO's report, the Acting Chair pointed out, among other things, that the report failed to explain in any depth the Postal Rate Commission's purposes and the benefits derived from the procedural processes thc Commission uses to develop its recommendations. Without such information, the Acting Chair believed that the report may give the inaccurate impression that the Commission took an excessive amount of time to perform its functions. (See app. IV.)

GAO performed its work with an awareness of the Commission's purpose but directed its effort

Tear Sheet

toward determining why the Commission took as long as it did to issue recommended decisions on two Postal Service proposals. The scope of GAO's review did not provide a determination of whether the procedural processes the Commission uses produce a benefit. GAO identified factors which lengthen the proceedings but did not conclude that the time required to issue recommended decisions was excessive.

The Postmaster General believed that GAO's report may give a reader, unfamiliar with the Postal Rate Commission, the impression that the proceedings take so long because the Commission is a victim of (1) burdensome requirements of the Administrative Procedure Act, (2) the great number of intervenors involved, (3) the massive amounts of data the Commission must consider, and (4) unresolved jurisdictional disputes between the Commission and the Service. Instead, the Postmaster General offered the following reasons for the Commission's delay:

--The Commission's own rules, most of which are not mandated by the Administrative Procedure Act.

--The Commission's willingness to indulge the Officer of the Commission in his obsession with detail.

--The Commission's weak enforcement of evidentiary rules, which encourages lengthy digressions in the proceedings.

--The Commission's inconsistency in rulings.

Additionally, the Postmaster General stated that jurisdictional disputes arise not because jurisdictional boundaries are unclear, but because the Commission refuses to respect established boundaries. (See app. VII.)

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ABBREVIATIONS

E-COM	Electronic Computer Originated Mail
FCC	Federal Communications Commission
GAO	General Accounting Office
ICC	Interstate Commerce Commission
OOC	Officer of the Commission
PRC	Postal Rate Commission

GLOSSARY

Certified question	A "certified" appeal to one of the Presiding Officer's rulings. The Presiding Officer may "certify" an appeal, which means that, due to the importance of the issues, he requests all of the Commissioners to consider it.
Direct testimony	The initial written testimony of a party which presents and supports its position.
Discovery	The procedure used by a party to obtain pertinent information and/or documents from another party. Participants file written questions (interrogatories) which must be answered by another party's witness, unless that party requests the Presiding Officer to rule that it need not answer.
Evidentiary hearing	Public hearings before the Commission to take evidence from witnesses. Participants and intervenors orally question other parties' witnesses about their written

	testimony and about any interrogatories which concern that testimony.
Initial brief	A document filed with the Commission at the completion of evidentiary hearings which presents a party's position and supporting legal or policy arguments.
Interrogatories	Written questions to a party submitted by another party.
Intervenor	A person or organization filing a request with the Commission to be a party to the proceedings by citing an interest in the case. The Commission must approve all requests for parties to intervene.
Legal memorandum	A document which presents a party's assessment of the legal principles involved in an issue. The Presiding Officer may request a legal memorandum to clarify pertinent legal issues and the positions of participants, or, at times, a party may offer a memorandum on its own initiative.
Limited participator	A person or organization who is permitted to participate in a postal proceeding without becoming a party to all procedural aspects of the proceeding.
Moot	When conditions have changed so that rendering a decision is no longer necessary, the issue is called moot.
Motion to compel	A request that the Presiding Officer order another party to take a specific action, such as provide a more complete response to an interrogatory.
Officer of the Commission	This Office represents the interests of the general public in hearings held before the Commission.

Opinion	The Postal Rate Commission's bases for a recommended decision in a postal proceeding.
Oral argument	After all briefs have been filed in a Commission proceeding, oral argument provides the opportunity for the participants to make oral presentations to the Commission.
Petition to intervene	A request by an interested party to be a participator in a case proceeding.
Prehearing conference	A meeting of the parties before evidentiary hearings begin to consider all possible ways of expediting the proceeding.
Presiding Officer	The Commissioner who has been delegated the authority to regulate the course of proceedings in a case.
Rebuttal testimony	The testimony of a party to a proceeding after all parties have filed their direct testimony and their witnesses have been cross-examined.
Reply brief	The brief that responds to the arguments presented in other parties' initial briefs.
Request for reconsideration	A Postal Service request to the Postal Rate Commission for a re-evaluation of an Opinion and Recommended Decision in a postal proceeding. It follows a Governors' decision to remand a Commission Recommended Decision.
Settlement conference	A meeting of some or all of the parties to agree on a mutually satisfactory resolution of some or all of the issues.
Technical conference	An informal meeting held off the record for hearing participants to discuss and clarify the technical details of a case.

CHAPTER 1

INTRODUCTION

In creating the U.S. Postal Service and the Postal Rate Commission (PRC), it was envisioned that the Commission would

> "* * * be a true partner of the Board of Governors in every aspect of postal operations. If a bureaucratic struggle between the Board and the Commissioners develops, then the whole theory of independent ratemaking judgments will have failed and the Congress will probably be called upon to revise the system. * * * It is expected that the Commission will work in harmony with the Board of Governors, acting in a timely and responsive manner to the Board's requests for recommended decisions for changes in rates, fees, and classifications." 1/

Although congressional aims to reorganize the Post Office Department materialized, a harmonious coexistence between the Service and PRC has not. What exists now between the two agencies is an adversary relationship plagued with accusations from both sides ranging from failure to provide necessary information to overstepping jurisdictional bounds.

PRC'S ROLE AND RESPONSIBILITIES

The Postal Reorganization Act of 1970 (Public Law 91-375, 84 Stat. 719, 39 U.S.C. §§ 101 et seq.) created PRC as an independent establishment of the executive branch and also changed the Post Office Department into an independent establishment of the executive branch called the U.S. Postal Service. PRC serves as an open forum for proposed changes in postal rates, fees, mail classifications, and changes in the nature of available postal service, 2/ or appeals from Postal Service decisions to close or consolidate small post offices. The Commission also investigates complaints concerning postal rates, fees, mail classifications, or services.

PRC is made up of five Commissioners and a staff of about 73 persons. The President appoints the Commissioners, who are

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1/U.S. Cong., Senate, Postal Reorganization, 91st Cong., 2nd sess., S. Rept. 91-912 (1970), pp. 13-14.

2/These would be cases in which the Postal Service determines that a current service, such as Saturday delivery, should be changed. PRC would hold hearings and render an advisory opinion rather than a recommended decision.

confirmed by the Senate, for 6-year terms. Also, the President designates one Commissioner as Chairman, and the Chairman's tenure during his term of office is at the pleasure of the President. Current authorized staffing at PRC is as follows:

Commissioners, Special Assistants, Secretaries	16
Office of the General Counsel	17
Administrative Office	12
Office of Technical Analysis and Planning	16
Office of the Officer of the Commission	17
Total Authorized Staff	78

Annually, PRC submits a proposed budget to the Postal Service for expected Commission expenses including rent, supplies, compensation, and employee benefits. Since fiscal year 1978, the annual PRC budget requests, which the Governors approved, ranged between $3.3 and $3.6 million. The Postal Governors can approve or adjust the total amount of the budget proposal but cannot adjust specific line items within the budget.

Under the Postal Reorganization Act, PRC submits recommended decisions on Postal Service proposals concerning changes in established rates or mail classifications to the Governors of the Postal Service. 1/ Prior to rendering its decision, PRC is required by law to provide an opportunity for hearings on the record. These hearings allow any interested party to present his own witnesses, cross-examine those of other parties, and make his views known through briefing and argument.

When the Commission renders its decision, the Governors then accept, reject, or allow under protest the recommended decision. If accepted, the change is scheduled for implementation. If rejected or allowed under protest, the proposal may be resubmitted, possibly with suggested modifications, for PRC reconsideration. On receiving a second recommended decision, the Governors have the same options available as for the first

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1/The Postal Service's Board of Governors is composed of eleven members, nine of whom are known as Governors who are appointed by the President and confirmed by the Senate, and are chosen to represent the public interest in postal matters. In addition to the nine Governors, the Postmaster General and Deputy Postmaster General serve as members of the Board of Governors.

decision, but they may also modify it by unanimous vote if the Governors expressly find that (1) such modifications are in accord with the hearing record and the intent of the Reorganization Act, and (2) the rates recommended by PRC are not adequate to provide sufficient total revenues so that the total estimated income and appropriations will equal estimated total costs as nearly as practicable. The Governors' decisions to accept, allow under protest, or modify are subject to judicial review if appealed by a party to PRC proceedings.

Since its inception, PRC has rendered decisions on 6 rate cases with case length ranging from 9 to 23 months and 14 mail classification cases ranging from 7 to 39 months in length. (See app. III.)

OBJECTIVES, SCOPE, AND METHODOLOGY

Because of concerns over PRC's protracted delays in rendering recommended decisions on two Postal Service proposals, Senator Ted Stevens requested us to determine whether the time required was necessary to satisfy the rights of due process of interested parties. Senator Stevens was particularly concerned with PRC's actions in the Parcel Post case (MC78-1) and the Electronic Computer Originated Mail (E-COM) case (MC78-3). In both cases, PRC took 15 months to make an initial recommended decision.

To accomplish this assessment we

--spoke with PRC officials, Postal Service officials, and participants in the PRC proceedings to identify why these cases took 15 months;

--reviewed the extensive case documentation associated with the Parcel Post and E-COM cases to identify the reasons for the length of each procedural phase;

--reviewed legislative hearings and procedural modifications relating to PRC and the Postal Service to identify steps taken to expedite proceedings; and

--attended the formal hearings associated with the most recent rate case to familiarize ourselves with the process.

Although we limited our review to a detailed analysis of the Parcel Post and E-COM cases, we also became familiar with a Third-Class Presort case as well as the most recent rate case which was pending at the time of our review. Our observations, however, are based primarily on the two cases reviewed in detail, and we therefore cannot conclude that they are applicable to all PRC proceedings.

We conducted our work at the Postal Rate Commission and U.S. Postal Service headquarters in Washington, D.C.

AGENCY COMMENTS

In commenting on our draft report, the Commission stated that we failed to (1) explain in any depth its purpose, (2) provide an accurate statement of its functions and responsibilities, and (3) recognize the three distinct roles the Congress expected PRC, the Board of Governors, and the operating management of the Postal Service to play in developing postal rates and fees. The information provided by the Commission to fill these gaps can be found in Appendix IV, pages 46 to 50.

CHAPTER 2

THE REGULATORY PROCESS TO ESTABLISH POSTAL RATES AND CLASSIFICATIONS

The Postal Reorganization Act of 1970 created the Postal Rate Commission (PRC) as an independent establishment of the executive branch of the Federal Government. The Commission's major responsibility is to submit recommended decisions to the Governors of the Postal Service on postage rates and fees and mail classifications. The Commission publishes proposals in the Federal Register, schedules public hearings on rate and classification changes, conducts those hearings and assembles from testimony of the witnesses a factual record for decision, analyzes the record, and renders a recommended decision.

ENSURING DUE PROCESS IS BASIS FOR PRC'S FORMAL PROCEDURES

The Postal Reorganization Act requires the Postal Rate Commission to promptly consider the Postal Service's requests for changes in rates and fees of postal services or in mail classification schedules. The Commission, however, cannot render its recommended decision until the opportunity for a hearing on the record under sections 556 and 557 of the Administrative Procedure Act (5 U.S.C. §§ 556, 557) has been accorded to the Postal Service, users of the mails, and an Officer of the Commission (OOC), who is required to represent the interests of the general public.

To implement its congressional mandate, PRC issued its Rules of Practice and Procedure in January 1971. These rules, in accordance with the Administrative Procedure Act and the Postal Reorganization Act, institute formal trial-like hearings for rate and classification cases proposed by the Postal Service. These procedures are shown in chart form in appendix I and briefly described below. Also, definitions of the specialized terms associated with the process are in the glossary.

Formal rate case procedures

For rate cases, the process begins when the Postal Service files a formal request with PRC for a recommended decision on postal rates or fees. This formal request includes that material considered to be the Postal Service's direct testimony and must include such information and data and such statements of reasons and bases as are necessary to fully describe the nature, scope, significance, and impact of the proposed changes.

Within 5 days, PRC provides notice of the proposed rate change in the Federal Register and gives interested parties a fixed period of time to file petitions to intervene in the rate

proceeding. Persons granted permission to intervene are considered parties to the proceeding and may actively participate in the rate proceeding. Interested persons not requesting intervenor status may file petitions as "limited participants" who are entitled to file briefs and present evidence that is relevent to the issues in which they are interested.

Once intervenor petitions are approved and limited participants identified, PRC schedules the first prehearing conference. Although not mandatory, prehearing conferences are strongly encouraged by PRC regulations to expedite the hearing process. Consistent with the arrangements made at the conference, intervenors and the OOC begin discovery on the Postal Service's direct testimony. Discovery includes three basic components:

(1) Interrogatories--Participants prepare written requests for relevant information from other participants in the proceeding which must be answered. Each interrogatory must be answered separately and fully in writing and under oath, unless the party objects to answering the interrogatory. If the latter, the reasons for objection are stated in lieu of an answer.

(2) Requests for Production of Documents--Any participant may request any other participant to produce and permit the participant making the request to inspect and copy any documents or things which are relevant to the rate proceeding, and which are in the custody or control of the participant upon whom the request is served.

(3) Requests for Admissions--Any participant may serve upon any other participant a written request for the admission of any relevant, unprivileged facts, including the genuineness of any documents or exhibits to be presented in the hearing.

Parties have 10 days 1/ in which to object to answering these requests. Otherwise, answers must be provided within 20 days to the requesting party, PRC, and any other party requesting to receive such information.

If a party fails to comply with another party's request to provide information, the requesting party may make a motion to the presiding officer to compel the requested party to provide the information. The presiding officer rules on motions to compel answers (no time limit is established). Within 5 days, parties may appeal to the presiding officer to request that all of the Commissioners consider the motion. (Note: Motions, rulings, and appeals could occur during all phases of the proceeding.)

1/At the time of the E-COM and Parcel Post cases discussed in Chapter 3, parties had 20 days to object to a request. A subsequent rulemaking change reduced the number of days to 10.

Since the Postal Service files direct testimony in support of its application for a rate change, the OOC and intervenors first direct discovery to the Postal Service. This process allows parties to (1) understand fully the Service's case and (2) select questions and answers they believe should be included in the record and submit them as their "written cross-examination" of the particular Postal Service witness.

After this process is complete, the OOC and intervenors submit their written cross-examination for the record and orally cross-examine the witnesses to the extent necessary to round out the written cross-examination. (Under PRC rules, unlike court rules, permission must be granted to engage in oral cross-examination.) A second conference may be held prior to this hearing. On the basis of the OOC's and intervenors' views of the Postal Service's request for a rate change and other data obtained during discovery, the OOC and intervenors file their direct written testimony with PRC.

Following this filing, the Postal Service has the opportunity for discovery concerning the presentations of the OOC and intervenors. During this stage, intervenors also begin discovery of the OOC and other intervenors and vice versa. This phase of discovery also leads to the filing of written cross-examination.

The Postal Service files its written cross-examination and conducts any necessary oral examination of OOC and intervenor witnesses at further public hearings. Similarly, the OOC and intervenors cross-examine each other's witnesses. Before these hearings, a third prehearing conference may be held.

Any party--intervenors, the OOC, or the Postal Service--may offer rebuttal testimony at another set of public hearings which is also subject to cross-examination. PRC then closes the evidentiary record.

Once the evidentiary record is closed, the briefing period begins in which the Commission gives all parties the opportunity to file briefs. A brief is to contain a clear, concise, definitive statement of the party's position regarding the Postal Service proposal; a discussion of the evidence; and proposed findings and conclusions. After the briefs are filed, the Commission may allow all parties to present oral argument, when time permits and the nature and complexity of the issues warrant such argument.

Finally, PRC reviews all filings, evidence, arguments, and testimony and then issues a written recommended decision to the Governors of the Postal Service. PRC must render its decision on rate cases within 10 months from when the Postal Service submits its original request. If, however, the Commission determines that the Postal Service has unreasonably delayed the rate

proceedings by failing to respond within a reasonable time to any lawful order of the Commission, PRC may extent the 10-month period by 1 day for each day of such delay.

If PRC fails to render a decision or extend the proceedings within the 10-month period, the Postal Service may establish temporary changes in rates and fees in accordance with the proposed changes under consideration by the Commission. These temporary changes cannot remain in effect longer than 150 days after PRC renders its decision to the Governors.

Procedures for classification cases can differ from rate cases

Classification cases submitted by the Postal Service for PRC consideration are processed in much the same manner as described above. That is, in most instances formal trial-like procedures are instituted which result in the filing of direct testimony, discovery, public hearings, oral and written cross-examination, briefing period, and the rendering of a written recommended decision by the Commission.

The primary differences between rate and classification cases are (1) the Commission can initiate classification cases; (2) no time limits exist for classification cases other than those designated by the Postal Service as experimental, for which the Commission has by rule adopted a five-month guideline; and (3) temporary classification changes, provided they do not involve important, inseparable rate consequences, can be implemented temporarily if the Commission fails to render its decision within 90 days after the Postal Service submits its proposal. Additionally, the Postal Service is not required to submit as many different types of data in classification proposals.

Proposals to modify PRC or its procedures

Since the 1971 reorganization, the Congress considered several modifications to PRC, its proceedings, the Postal Board of Governors, or the Postal Service itself. Numerous bills have been introduced since 1975 to amend various provisions of the Postal Reorganization Act. Basically, these bills have proposed to (1) abolish the Board of Governors, (2) make the Postmaster General a presidential appointee, (3) modify PRC procedures, (4) provide PRC with its own appropriations, and/or (5) give PRC final decision making authority.

In 1975 at least two bills were introduced to modify PRC proceedings. H.R. 2445 contained provisions aimed at deleting the trial-like hearings required by sections 556 and 557 of the Administrative Procedure Act. H.R. 8603 had similar provisions. According to the House Report on H.R. 8603, the Committee concluded that the hearing procedures required by Sections 556 and 557 were not necessary for setting of postal rates, establishing classification schedules, considering changes in postal services, or hearing of rate and service complaints. The Committee recommended that the Commission be required to hold simpler, legislative-type hearings instead. The Administrative Conference of the United States agreed with these provisions of H.R. 8603.

The House passed these provisions, but comparable Senate legislation did not provide for the elimination of the trial-like hearings. The conference report left unchanged the requirement for trial-like proceedings on the record.

H.R. 8603 and the companion Senate bill which became the Postal Reorganization Act Amendments of 1976 (Public Law 94-421, 90 Stat. 1303) made the following changes to PRC:

--Made Presidential nominees to the Commission subject to Senate confirmation.

--Established a 10-month timeframe for PRC consideration of rate proposals and delayed implementation of temporary rates for the same period.

--Provided for the extension of cases on a day-for-day basis when the Commission determines that the Postal Service unreasonably delayed the consideration of the request.

As recently as June 1981, an attempt to modify current ratemaking and classification procedures was introduced to the Congress. H.R. 3852 contains provisions to abolish PRC and to transfer its authority to administrative law judges within the Postal Service. This proposed legislation is currently under consideration by the House Committee on Post Office and Civil Service.

CHAPTER 3

TIMELINESS OF POSTAL RATE COMMISSION DECISIONS

The Postal Rate Commission conducts full, trial-like hearings for rate and mail classification proceedings in which all interested parties are given an equal opportunity to present their views. PRC is required to conduct the proceedings with the utmost expedition consistent with procedural fairness to all parties.

The two proceedings reviewed--Parcel Post and Electronic Computer Originated Mail (E-COM)--lasted 15 months each before PRC rendered its initial recommended decision. The two cases took 5 months longer than PRC's consideration of the last three major rate cases. These major rate cases involved all classes of mail and included more participants, more witnesses, and a more voluminous hearing record than the two cases which were each limited to one subclass of mail.

PARCEL POST: THE PROPOSAL, PRC'S DECISION, AND THE POSTAL GOVERNORS' DECISION

On September 8, 1978, the Postal Service filed a proposal with PRC to change certain terms, conditions of service, and rates applicable to fourth-class zone-rated 1/ parcel post mail. The Service proposed to restructure the bulk subclass and offer lower, and therefore more attractive, rates for mailers who present at least 50 machine processible parcels. Additionally, the Service proposed a $1.50 surcharge for single-piece, nonmachinable parcels.

During the period March 14 through September 24, 1979, the PRC held 21 days of hearings to receive testimony from 19 witnesses. Sixteen parties participated and directed almost 1,200 interrogatories to other parties resulting in a hearing record of almost 4,800 pages.

PRC issued its Opinion and Recommended Decision on December 5, 1979, denying the proposed changes because of numerous and insurmountable technical deficiencies in the Postal Service proposal. PRC cited as the bases for its rejection (1) the poor quality of the Service's quantitative evidence and (2) the misdirection of the major thrust of the Service's proposal.

1/Zone-rated refers to the price to mail a parcel based on weight and distance from the mailing post office.

Two months later, on February 6, 1980, the Postal Governors rejected the Commission's recommended decision because they believed that it failed to take into account that (1) large quantities of parcels received from one single mailer cost less per unit to handle, (2) the parcel post market is highly competitive, and (3) there are practical and sensible limits to data collection requirements for ratemaking purposes. The Governors did not, however, remand the case for reconsideration. Thus, no changes in parcel post rates or services occurred.

REASONS FOR THE LENGTH OF THE PARCEL POST CASE

PRC originally scheduled the Parcel Post case to be completed in 10 months, but the proceedings took 15 months. Our review indicated that the following factors contributed to the length of the proceedings:

--The Postal Service changed its testimony and objected to discovery efforts.

--The parties disagreed over the nature and scope of the case.

--The PRC staff initially considered the case to be deficient, but the Commission allowed it to continue.

Postal Service changed testimony and objected to discovery efforts

PRC ruled that the Postal Service had unreasonably delayed consideration of its request by (1) changing testimony and (2) failing to produce informational items in compliance with Presiding Officer's rulings. As a result, the Commission extended the 10-month period for its consideration of the Postal Service's request by 5 months.

Postal Service changed volume testimony

On September 8, 1978, a Postal Service witness filed his testimony relating to parcel post volumes. This witness obtained employment elsewhere, but his testimony was adopted by a second witness on October 26, 1978. On January 12, 1979, the Service withdrew its original volume testimony, and a third witness presented substitute volume testimony on January 29, 1979. Related testimony of another Service witness was not filed until February 9, 1979. On April 13, 1979, the third volume witness revised his testimony, and other Postal Service witnesses made minor revisions to their testimony through April 17, 1979.

As a result of the changes in Postal Service testimony, the last interrogatory directed to a Postal Service witness was filed on May 11, 1979, and answered on May 24, 1979, far exceeding the Commission's proposed schedule. The Commission originally established a December 1, 1978, deadline for completing discovery directed to the Postal Service. The changes in testimony also delayed the evidentiary hearings because oral cross-examination of Postal Service witnesses did not begin until March 14, 1979 (about 7 weeks later than originally scheduled), and was not completed until April 18, 1979 (about 10 weeks later than originally scheduled).

When the Postal Service changed its testimony, the intervenors and the OOC had to redirect their interrogatories and modify their own direct testimony. One intervenor made a motion that the Commission dismiss the Postal Service request because of the Postal Service's frequent and significant changes in this evidence. The Presiding Officer denied the motion.

In the Postal Service's view, the changes in volume testimony were not ill-intentioned and did not alter the essence of its proposal. The Postal Service contends that changes in the volume testimony became necessary because its original witness left the Service and more current volume data became available. Also, the Service noted the impossibility of precise volume forecasting for a restructured subclass for which no historical data existed. Additionally, the Service noted that it has made such changes in prior proceedings and characterized these changes in volume testimony as generally minor.

In the Commission's view, however, most of the forecasts desired related to projected use of existing subclasses. The Commission contended that a major issue was the extent to which mailers would use parcel post if the Postal Service proposal was not implemented. The Commission pointed out that the Service's final revision projected 191 million parcels sent in the test year as compared with only 150 million projected in its initial testimony.

Postal Service objected to discovery efforts

The Service objected to 62 interrogatories in whole or in part, which led one intervenor and the OOC to submit 13 motions to compel responses by the Postal Service. After considering extensive pleadings concerning each motion, the Presiding Officer granted seven motions in whole or in part.

The Postal Service failed to make timely responses as directed by the Presiding Officer in a number of instances, and sometimes the Service failed to produce the requested information to the moving party. In other instances, the Service failed

to produce the requested information for inspection by the Presiding Officer so that he could reconcile competing claims of relevance and privilege.

In the Commission's view, the information request that caused the greatest delay was data on distribution of parcel volume by zone for fiscal year 1978. The Presiding Officer ordered the Postal Service to produce this data requested by OOC. Although the Service informed the Commission that it would take 2 months to produce the data, the Presiding Officer ordered that it be produced in 5 weeks. The Service developed the data in just under 2 months, after what it considered to be a top-priority effort. The Postal Service contends that this data added nothing new to the proceeding.

PRC extended the case by 5 months

On May 18, 1979, the Commission extended the case by 151 days because it determined that the Postal Service delayed the proceeding by changing its testimony and failing to produce information in compliance with Presiding Officer's rulings. The Commission believed that the Service's conduct hindered other parties' attempts to become fully informed about the Service's proposal, which inhibited their preparation of rebuttal testimony. The Commission concluded that the effect on other parties was inconsistent with the requirements of due process.

The Postal Service and two intervenors appealed to the Commission seeking reconsideration of the extension. The Postal Service argued that the 10-month time limit for rate cases did not apply in this proceeding, which the Service considered a classification case. As an alternative argument, the Service advanced the view that the Commission's method of calculating the extension was incorrect. The two intervenors also disagreed with the Commission's calculation of the extension, but the Commission affirmed the extension on July 3, 1979.

The extension prevented the Postal Service from implementing the proposed rates after 10 months. (A court had earlier held that, though filed as a mail classification case, the Postal Service's proposal had predominant rate effects and was thus governed by the 10-month limit.) A party interested in having the Service implement temporary rates in accordance with its proposal sought court review of the extension, and the Commission's order was upheld.

The parties disagreed on the nature and scope of the case

The disagreement between the Postal Service and PRC over the nature and scope of the proceeding complicated the case, thus potentially contributing to case length. The disagreement

centered around two issues: (1) whether the proposal was a mail classification or rate matter, and (2) whether the proposal had a limited or broad scope.

The Postal Service filed its request as a mail classification matter and maintained that its request was in no significant respect a rate change matter. Therefore, the Service wanted consideration of its proposal confined to the mail classification section of the Reorganization Act. Contrary to the Postal Service's position, the Commission concluded, as did the Court, that the Service's proposal was, in several significant respects, a rate matter.

Since the Service filed the proposal as a mail classification matter, the law permitted the Service to implement temporary rates after 90 days. One intervenor filed a lawsuit to prevent the Service from imposing the new rates, and a Court found that the Service's proposal had both rate and classification aspects, but the rate aspects predominated. The Court thus ruled that the 10-month provision applied to the Parcel Post case and found that the Service was prohibited under the circumstances from instituting temporary rates after 90 days.

Throughout the proceeding, the Postal Service viewed its proposal as restrictive by characterizing it as a "limited proposal," a "modest first step" entailing only a "restructuring of the bulk parcel post subclass." The Commission, however, concluded that the proposal was considerably more extensive than the Postal Service's characterization. The Commission considered the proposal a significant reclassification of parcel post and an internal realignment of parcel post rates. The Commission also found the need to consider the effects of those changes on other mail categories.

Early technical deficiencies noted,
but case ran its full course

Although some Commission staff members viewed the Parcel Post proposal as deficient early in the proceeding, the Commission decided to allow the proceeding to run its full course. As a result, the formal proceedings continued for 15 months with 16 participating parties. After 15 months, the Commission issued its recommended decision, denying the Service's proposal on the basis of what it concluded were numerous and insurmountable technical deficiencies, such as poor quantitative evidence which contained inconsistencies, oversights, and unsupported judgments. An early rejection of the Parcel Post case might have significantly shortened the case and saved the time and resources of all participants. Of course, the Service would have been free to submit the proposal again, possibly in revised form, and start the proceedings over.

One intervenor made a motion to dismiss the proceeding on October 30, 1978--about 2 months after the case was filed. The Presiding Officer found that "there did not then appear to be deficiencies in the Postal Service's filing of sufficient severity that they would interfere with the fair and expeditious conduct of the proceeding." The Commission believed that, even though the proposal was lacking in some technical aspects, the necessary information might come forth in the discovery phase and the evidentiary hearings.

The same intervenor again motioned to dismiss the proceeding on April 16, 1979, arguing that the proceeding should be dismissed because the Service's withdrawals of witnesses and testimony showed that it could not support its original request. The Commission denied the motion because dismissal of the case on the merits after the Postal Service presented its case, but before the evidentiary record was closed, was considered an inappropriate remedy in an administrative proceeding. The Commission believed that the public would best be served by allowing the OOC and the other parties to present their cases. Also, the Commission wanted a complete record to be able to issue a reasoned decision based on all the evidence.

Subsequently, the Commission adopted, on September 10, 1980, a rejection mechanism in its Rules of Practice and Procedure. Under the new rule, the Commission may reject Postal Service requests for rate and classification changes that do not comply with the Commission's rules for such requests. The Commission rule, adopted in the interests of administrative efficiency, permits dispensing with a hearing when a filing is so deficient on its face that opening a docket to evaluate it would be futile without supplementation; it permits a rejected filing to be corrected and refiled without prejudice.

The Postal Service contends that PRC may never reject a request without holding evidentiary hearings and issuing a Recommended Decision. The Service believes that the Commission's duty as stated in the Reorganization Act precludes the Commission from any other response. Also, the Service argues that the Commission's authority to reject allegedly defective requests may not be compared to that of other Federal regulatory agencies since, unlike the Commission, they are "true" regulatory agencies, that is, agencies that have broad supervisory authority over particular private industries.

ELECTRONIC COMPUTER ORIGINATED MAIL (E-COM): THE PROPOSAL, PRC'S DECISIONS, AND THE POSTAL GOVERNORS' DECISIONS

On September 8, 1978, the Postal Service filed a proposal with the Postal Rate Commission to introduce a new subclass of First Class Mail directed to large volume mailers. This new subclass involved the use of electronic mail technology to reduce processing time and transportation costs. As E-COM was originally proposed, the Service would accept customers' nonhard-copy messages and electronically transmit these messages via communication carrier's lines to any or all of 25 serving post offices. Once received at the postal facility, the message would be printed, enveloped, and placed in the normal mail stream for delivery within 2 business days.

Beginning on February 12, 1979, and ending on October 24, 1979, PRC held 29 days of hearings to receive testimony from eight witnesses. Thirty-three parties participated and directed almost 1,100 interrogatories to other parties resulting in a hearing record of nearly 7,400 pages.

Fifteen months after initiation, on December 17, 1979, PRC issued its Opinion and Recommended Decision with three Commissioners agreeing and two offering dissenting opinions and recommendations. PRC endorsed the Service's participation in the electronic mail field but recommended an alternative E-COM approach (to be conducted on an experimental basis) which would not allow the Service to enter into a sole-source contract for E-COM transmission services. The alternative proposal would permit (1) any willing and able common carrier to connect with the Service's facilities and (2) needed data processing facilities to be directly controlled by the Service.

Two months later, on February 22, 1980, the Postal Governors responded to PRC and agreed that the telecommunications segment of E-COM should be obtained through full and free competition among common carriers and that the Service's delivery system should be available on a nondiscriminatory basis to all who wished to use it. Prior to fully accepting the PRC decision, however, the Governors requested clarification of the decision and requested that E-COM be implemented as a permanent, rather than experimental, service.

After PRC's second recommended decision of April 8, 1980, the Governors agreed on August 15, 1980, to allow implementation of the PRC proposal under protest and to seek judicial review of PRC's decision. The Governors approved E-COM's implementation but objected to PRC's recommendation that E-COM be implemented on

an experimental basis. The Governors asked the Court of Appeals to set aside the experimental designation and the Court agreed. (See p. 35.)

REASONS FOR THE LENGTH OF THE E-COM CASE

The E-COM proposal was a significant mail classification issue because of potential effects on the Postal Service and the communications industry. The Commission originally scheduled the E-COM case to be completed in about 11 months; however, the proceedings leading to the Commission's first Recommended Decision lasted 15 months. Our review indicated that the following factors contributed to the length of the proceedings:

--Time-consuming consideration of the contractor selection issue.

--Extensive procedural conflicts (called motion practice) throughout the proceeding.

--Testimony revisions by a Postal Service witness.

--Consideration of the OOC's alternative system.

--FCC and Justice Department involvement.

Time-consuming consideration of the contractor selection issue

Consideration of the contractor selection issue was a lengthening factor in the E-COM proceeding. The issue centered around the Postal Service's proposal to enter into a sole-source contract with Western Union for telecommunications services for the 15-month, first phase of E-COM service. The Postal Service insisted that contractor selection was not an appropriate issue in this case, but the Commission disagreed, allowing participating parties to fully explore the issue. As a result, major procedural conflicts arose as the Postal Service resisted discovery efforts and the Postal Service witness was questioned at great length on the contractor selection issue.

Disagreement on the contractor selection issue

The Postal Service contended that its selection of Western Union was not an appropriate issue in the E-COM proceedings. The Service questioned the Commission's authority to review the contractor selection process because in its view such a review would encroach on the Service's authority to manage its affairs and to enter into contracts. In the Commission's view, however, consideration of the contractor selection process was proper in

this instance because the Postal Service alleged that during this process it concluded that the system it proposed was the only feasible way to initiate electronic mail service, a conclusion central to competition issues. Further, since the terms of the contract determined Postal Service revenues, costs and service standards, matters which are directly related to rates, the Commission believed that an inquiry into the development of these factors was proper. Because of the disagreement over this issue, confrontation rather than cooperation characterized this aspect of the E-COM proceeding.

Postal Service objected to discovery efforts

During the discovery process, the Postal Service opposed discovery efforts of the OOC and intervenors by objecting to many interrogatories, providing some answers OOC considered to be unresponsive, and at times not providing the requested information at all. As a result, the Commission and the OOC believed that the Postal Service was trying to withhold information. The Presiding Officer's concurring opinion to the majority opinion in the E-COM case stated:

> "What troubled me as Presiding Officer and Chairman, and troubles me still, is the difficulty we experienced in obtaining the needed information from the Postal Service in order to understand the basis for its position."

To explore the Postal Service proposal, the OOC addressed 250 interrogatories to the Service's two witnesses and the Service objected to 47 interrogatories. The OOC filed nine motions to compel responses to interrogatories, and the Presiding Officer granted eight motions in whole or in part. Postal Service answers compelled by the Presiding Officer were considered nonresponsive by the OOC and led to extensive oral cross-examination of Postal Service witnesses.

The Postal Service objected to some interrogatories because it believed the OOC was requesting privileged information. In addition, the Service told us that some interrogatories were very broad and vague, so it was a matter of judgment as to what constituted a complete response to some questions.

In an effort to obtain all documents relevant to the contractor selection issue, the Presiding Officer ordered the Postal Service to search its files several times. More than once, after a document search had been certified as complete, the Service submitted additional documents responsive to the ordered search which had not been produced previously. For example, one document

search produced over 100 documents which had not been provided earlier. This kind of behavior led the Presiding Officer to believe that the Service was "playing a cat-and-mouse game."

The Postal Service attributed its untimely submissions of requested documents to vague requests, broad interpretations of all OOC requests, and the poor filing system of its main witness. Secretarial turnover and shifting responsibilities aggravated the document retrieval problem. The Postal Service contended that in only two instances did it refuse to provide documents that the Presiding Officer ordered it to produce. The first instance involved an OOC request for the transcript of a closed Board of Governors meeting. The second involved an intervenor's request for the minutes of certain Executive Committee meetings. The Service refused to provide the documents for public disclosure because they involved internal management matters that the Service considered to be confidential.

Lengthy questioning of Postal Service witness

The Postal Service's main witness testified on 16 of the 29 days of E-COM hearings about the Service's selection of Western Union as a sole-source contractor. The OOC and one intervenor orally cross-examined this witness extensively and detected alleged inconsistencies in some of his responses and discrepancies between his responses and Postal Service documents. Consequently, the OOC suspected that the witness was "hiding something" by withholding information.

The Service's main witness testified for 8 days during February, March, and April 1979, until the Presiding Officer terminated the cross-examination, directing the Service to provide a list of FCC-licensed common carriers which were considered as possible suppliers of telecommunications service for E-COM. The Service's response conflicted with the witness' previous testimony. As a result, the Presiding Officer recalled the witness for further examination of the contractor selection process. In the interim, other phases of the E-COM proceeding took place, including discovery directed to the OOC and the oral cross-examination of the OOC's witnesses.

During the first recall of the Service's witness, the OOC and one intervenor cross-examined him for another 7 days during May and June 1979. As the cross-examination continued, the OOC discovered that the Service had not provided what the OOC believed to be numerous relevant documents. The Presiding Officer then directed the Service to conduct a series of document searches. As new documents appeared, the parties saw the need to further cross-examine the witness. The Service witness' testimony was essentially completed on June 8, 1979, but the Presiding

Officer recalled him a second time to testify on October 24. The witness appeared for one final day of further cross-examination and authentication of documents.

In commenting on our draft report, the Commission pointed out that it found that the Postal Service's conclusion that the contractor selection process had satisfactorily investigated the availability of alternatives was at best questionable, and that superior alternative technologies were readily available to the Postal Service. The Commission stated that it doubted whether "an analysis of this issue could have been performed without the extensive cross-examination rights accorded to parties by § 556 of the Administrative Procedures [sic] Act." (See app. IV, p. 52.)

Extensive motion practice throughout the proceeding

Several conflicts arose involving the discovery efforts of the parties. These procedural conflicts, referred to by the participants as motion practice, had a lengthening effect on the case.

The first extensive round of motion practice centered around the discovery directed to the Postal Service. The Service objected to 47 interrogatories, and the OOC filed 9 motions to compel responses. Another round of motion practice occurred during discovery directed to the OOC. The OOC objected to 58 interrogatories, and the Postal Service filed 6 motions to compel OOC responses. As a result of the extensive motion practice, both discovery phases took several weeks longer than originally scheduled. Although motion practice occurred throughout the case, it was heaviest during a 3-month period toward the end of the case.

According to Commission rules, a party is permitted to file a motion which requests the Presiding Officer to make a ruling on a certain matter, such as compelling another party to respond to interrogatories. When one party files a motion, opposing parties have an opportunity to answer the motion within 10 days. The Presiding Officer then makes a ruling to grant or deny the motion, and parties disagreeing with this ruling can file motions for reconsideration which would be followed by further answers and another ruling.

This process can consume a great deal of time. In the example below, it took 78 days to obtain information, and although this particular example did not delay the proceeding, a series of motions during a particular phase of a case could cause that phase to take longer than originally scheduled. Not all motions to compel take as long to resolve as this example, which the Commission considers a worst-case situation. We selected this example

to show the time and procedures that may be required incident to the disposition of a controversial motion.

Date	Action
March 19, 1979	Postal Service filed interrogatories nos. 54-144 directed to an OOC witness.
April 5	OOC filed objections to interrogatories nos. 72, 74-77, 79, 80, 82-86, and 88-91.
April 9	OOC filed answers to interrogatories nos. 54-71, 73, 78, 81, 87, and 92-144.
April 24	Postal Service filed a motion to compel OOC responses to or additional information for interrogatories nos. 72, 74-77, 79, 80, and 82-92.
April 27	OOC responded to the Postal Service motion to compel.
May 8	Presiding Officer denied the Postal Service motion to compel.
May 15	Postal Service filed a motion for reconsideration of the Presiding Officer's ruling denying the motion to compel.
May 31	Presiding Officer granted the Postal Service motion for reconsideration with respect to interrogatories nos. 75, 80, 87, 88, and 91 and denied the motion in all other respects.
June 5	OOC filed answers to interrogatories nos. 75, 80, 87, 88, and 91.

The longest round of motion practice, a 3-month period toward the end of the case, was not a specific procedural phase. (See app. II.) The time period spanned from the end of rebuttal testimony on July 13, 1979, to the final day of Postal Service testimony on October 24, 1979. During this time, the participants filed 15 motions and related documents concerning such issues as (1) efforts by one intervenor to compel testimony from the Postmaster General, (2) further searches of the Postal Service files, and (3) efforts by the OOC and one intervenor to obtain minutes of closed Executive Committee meetings and Board of Governors meetings. In addition to these motions, the Commission issued two Notices of Inquiry to supplement the hearing record developed by the parties. These notices related to the Administration's Policy

Statement on the Postal Service's role in electronic mail and the privacy and security issues involved in E-COM. Also during this period, participants prepared their briefs which were due by November 9, 1979.

Testimony revisions by Postal Service witness

Revision of testimony related to estimated system costs by a Postal Service witness and the associated procedural battle lengthened the E-COM case. The Service's cost witness filed his original testimony on September 8, 1978. About 3 months later, the Service provided new cost data but did not amend its cost testimony to include the new data. Consequently, the OOC moved to strike the cost testimony because the new data and method of cost analysis differed substantially from the original methodology.

While a ruling was pending on an OOC motion to strike the original testimony from the record, the Service's witness adopted the new data in response to an OOC interrogatory. The Presiding Officer then denied the OOC motion but required the Service to file supplemental cost testimony. The Presiding Officer noted that the procedural maneuvering caused by the Postal Service's refusal to amend its witness' testimony was essentially resolved "albeit in a somewhat dilatory and cumbersome way." Later, the Service revised its cost testimony three more times which delayed the appearance of the Service's witness for 1 month and caused the OOC's rebuttal testimony to slip 6 weeks.

The Postal Service viewed the changes in cost testimony as a minor factor in lengthening the case because revisions in testimony are common in PRC proceedings. When the new cost data became available, the Service provided it for the benefit of the Commission and the parties. Since the new data were adopted in response to an interrogatory, the Service viewed this as a "de facto revision." It considered formal testimony revisions unnecessary, even though they were ordered by the Commission.

Consideration of OOC's alternative system

The OOC's participation in the E-COM case involved the proposal of an alternative system which PRC found to offer better and lower cost electronic mail service than the Service's E-COM proposal. Although introducing alternative proposals is considered part of the OOC's role, the detailed consideration of the OOC's alternative system may have lengthened the case. Like any proposal presented to PRC, the Commission allowed the parties to fully explore it in its trial-like proceedings. The Commission

believed that in fairness to all parties it could not merely accept or reject a proposal without giving all parties an opportunity to fully evaluate the alternative proposal.

According to the OOC, the alternative system was presented to demonstrate that a better, more efficient, less expensive, and more convenient system could be designed. Without presenting the entire proposal, the OOC believed that weaknesses in the Service's proposal could not have been clearly demonstrated. Since alternatives can be expected in the normal course of a case, the OOC believed that consideration of the alternative system had no lengthening effect on the case. According to the Commission, the amount of time consumed in hearing the OOC proposal was no longer than called for in the schedule established at the beginning of the case.

During consideration of the OOC's alternative plan, the Service directed 770 interrogatories to the OOC's three witnesses. The OOC objected to 58 of the interrogatories, and the Postal Service responded by filing six motions to compel OOC responses. In the OOC's view, the large number of interrogatories was unprecedented in PRC classification proceedings and was an attempt to inundate OOC witnesses.

In commenting on our draft report, the Commission pointed out that the Governors accepted the OOC alternative system although the matter was sent back to PRC for clarification on some points. Thus, the Commission believed that consideration of the OOC alternative proposal was not without benefit. (See app. IV, p. 54.)

FCC and Justice Department involvement was a minor lengthening factor

Involvement by the Federal Communications Commission (FCC) and the Department of Justice may have been a minor lengthening factor in the case. As limited participants, these two agencies only filed legal memoranda and did not take part in the formal hearing process.

Under the Postal Service's proposal, Western Union would have provided transmission service under a sole-source contract for the 15-month, first phase of E-COM service. A question arose as to where regulatory jurisdiction over E-COM would lie. The Service took the position that E-COM was subject to PRC's jurisdiction but not FCC's. Western Union also maintained that its participation in E-COM was not subject to FCC jurisdiction because it was operating solely as the Postal Service's contractor. FCC disagreed, asserting that under the Service's E-COM proposal, it had jurisdiction over both entities. Until October 1980, the Service and FCC were engaged in litigation over the question of

FCC jurisdiction. In view of the Governors' August 1980 decision to accept PRC's decision, however, the Court dismissed the Postal Service's appeal as moot.

Because of FCC's involvement in the case, the Commission was concerned that adopting the Postal Service proposal would have resulted in a potential jurisdictional problem, which might have delayed the case. Avoiding the jurisdictional problem by recommending the alternative system under which the Service would not be involved with functions falling under FCC jurisdiction was one of the important considerations in PRC's decision.

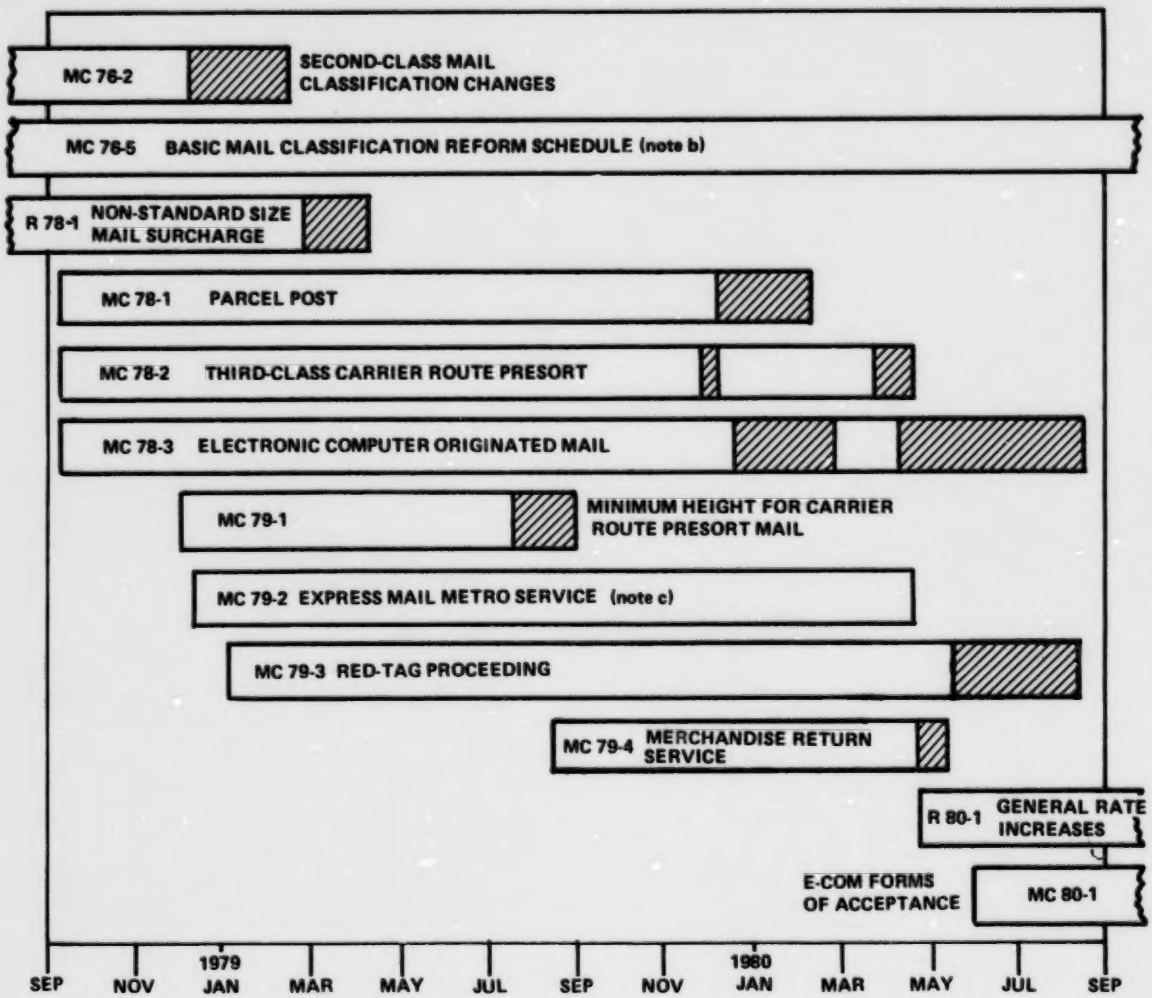
The Justice Department's Antitrust Division submitted a legal memorandum commenting on certain antitrust questions raised by the Presiding Officer. The Antitrust Division comments, along with the other parties' concerns, influenced the Presiding Officer to focus on the issues of competition and contractor selection in the proceedings, including an exploration of the Service's relationship with Western Union. As discussed above, contractor selection was a time-consuming issue in the proceeding.

OTHER FACTORS EXAMINED

We examined three additional factors which may have contributed to the length of the two cases. They were (1) case workload, (2) appointment of two new commissioners during the proceedings, and (3) dissension among some of the commissioners.

The Postal Service simultaneously submitted the Parcel Post, the E-COM, and the Third-Class Presort cases to PRC on September 8, 1978. Appendix II shows the dates of the procedural phases of these three cases. Additionally, three other cases were pending before the Commission. Subsequently, four additional cases were initiated during the E-COM and Parcel Post proceedings. The following chart shows the Commission's caseload from September 1978 through September 1980.

PRC CASELOAD IN ADDITION TO THE PARCEL POST AND E-COM CASES
(note a)



LEGEND:

PRC PROCEEDING

POSTAL GOVERNORS' CONSIDERATION

a/ MC=Mail classification cases, R=Rate cases.

b/ During this nonadversary proceeding, PRC tracks the progress of the Postal Service's long-range classification study.

c/ The Governors took no formal action on PRC's Recommended Decision in this case.

Commission officials expressed varied opinions on the effect of simultaneous cases on case length. Some officials said the number of cases ongoing simultaneously may have lengthened the cases, while others believed that simultaneous cases had no effect on case length.

PRC consideration of the E-COM and Parcel Post cases was well underway when two new Commissioners were sworn in--one on May 10, 1979, and a new Chairman on July 31, 1979. When the first new Commissioner started his term, the Commission had completed over half of the evidentiary hearings in the two cases. When the new Chairman took office, nearly 90 percent of the hearings in the two cases were completed. Around this time, the hearing transcript for the two cases totaled over 10,000 pages.

Commission officials expressed varied opinions as to whether the two new Commissioners taking office during the proceedings lengthened the cases. Some officials stated that the appointment of new Commissioners had no effect on case length. Others believed that it took some time for the new Commissioners to become familiar with the cases, but that the effect on case length was minor.

Dissension caused by personality and philosophical differences among some of the Commissioners existed during the E-COM case, resulting in a lack of harmony. This dissension was most evident during the decisionwriting process.

Two of the five Commissioners dissented from both recommended decisions in the E-COM case. These Commissioners charged that (1) the decisions overstepped the Commission's jurisdictional bounds and inappropriately took it into postal management matters, and (2) the other Commissioners and the Commission staff did not cooperate with them in the briefing and decisionmaking phases of the case.

In commenting on our draft report, the Commission pointed out that "[i]t is normal that members of collegial bodies will occasionally differ, and the existence of differing opinions does not delay the decisionmaking process." (See app. IV, p. 54.)

AGENCY COMMENTS AND OUR EVALUATION

Comments on our draft report were furnished by Janet D. Steiger, Acting Chair of PRC, Commissioners Fritschler and Duffy, and the Postmaster General.

PRC comments

In commenting on our draft report, the Commission stated that our analysis of the time required to consider the Postal Service's proposals failed to consider the importance of the functions performed by the Commission. The Commission believed that such an analysis would enable readers of the report to evaluate whether time is spent efficiently and whether the benefits to the public and the Postal Service warrant the expenditure of the required time. The Commission pointed out that, in both cases studied, the Postal Service significantly altered the bases on which its proposals were grounded when subjected to in-depth questioning. The Commission believed that such questioning is likely to improve the finished product and may prevent the Postal Service from undertaking policies which might be detrimental to the public or the Service itself. (See app. IV, pp. 58 to 60.)

Our task was to determine why the Commission took as long as it did to render a decision on two specific Postal Service proposals. A judgement of the soundness and worth of the decisions was beyond the scope of our review. We did not conclude that the decisions should have been issued in less than 15 months nor did we indicate that the Commission did more than necessary to satisfy the rights of due process for the involved parties.

Commissioners' comments--Fritschler and Duffy

Commissioner Fritschler, who was the PRC Chairman during part of the period covered by the cases we reviewed, informed us that the primary cause of the delay in the Parcel Post case was a combination of late-filed changes to Postal Service testimony and the failure by the Postal Service to comply with certain orders of the Presiding Officer. (See app. V, pp. 61 to 62.)

Regarding the E-COM case, Commissioner Fritschler said that the delays which were incurred in the Commission proceeding could be traced back to the inadequacy of the initial Postal Service request. (See app. V, p. 63.) Other factors lengthening the case, according to Commissioner Fritschler, were the

--Postal Service's apparent failure to consider the effect of E-COM on competition in the private sector;

--unprecedented complexity of the issues facing the Commission;

--procedural maneuverings of the Postal Service to avoid furnishing information asked for by the OOC and Graphnet Systems, a private telecommunications carrier; and

--wholesale revisions to the testimony of a Postal Service witness. (See app. V, pp. 63 to 66.)

Commissioner Duffy, who wrote dissenting opinions on both Commission E-COM decisions, said that the following factors lengthened the E-COM case: (1) the contractor selection issue; and (2) the "quixotic" attempt to have a few inexperienced Commission staff members and consultants design, plan, and develop an "alternative" telecommunications mail system for the Postal Service within the framework of a purely legal proceeding. (See app. VI, pp. 70 to 71.)

Postmaster General's comments

The Postmaster General repeated the Service's concerns about PRC's evidentiary standards and the significant volume of data PRC requires. (See app. VII.) Specifically, the Postmaster General said that:

--Much of the massive data in PRC proceedings is unneeded and irrelevant and is supplied only because PRC's staff requires it or the OOC or an intervenor with a vested interest wants it and PRC upholds the demand.

--The quantity and quality of parcel post data PRC wanted from the Postal Service would have required the Service to expend more money on data collection annually for the bulk parcel post sub-class than would have been recoverable through that sub-class.

--Volume projections which the OOC demanded were not needed because the cost and revenue data presented by the Postal Service were computed on an individual piece basis. After the data sought by the OOC was finally developed, under protest, and at great cost in time and resources, the OOC made no discernible use of the information.

--An intervenor in the case, who is a major competitor of the Postal Service, sought data on the origins of the Service's parcel post volume, the customers served, and other competitive information unnecessary for ratemaking or classification purposes. The Service believes that it properly "resisted" these requests for information.

--Some of the testimony changes cited were simply updatings of data occasioned by PRC's lengthy proceedings.

Additionally, the Postmaster General expressed regret that our draft did not consider more fully the role of the OOC as a source of delay. He said that supposedly, the OOC represents the

general public before PRC, but actually he does not actively solicit or usually receive comments from the public. As a practical matter, the Postmaster General believed that it is impossible to determine whose interest OOC does represent, other than his own, and that the consideration of his alternative proposals and the satisfaction of his data demands account for much of the time spent in PRC proceedings.

CHAPTER 4

OBSERVATIONS AND CONCLUSIONS

On the basis of our analyses of the Parcel Post and E-COM cases, we can make two principal observations about postal rate and classification proceedings. First, the trial-like procedures that govern ratemaking and classification assure the fullest practicable opportunity for the parties to air their arguments. The time required to comply with these requirements and render an initial recommended decision can be lengthy, particularly in controversial cases. Given the number of participants and the sheer volume of data which must be provided, even the simplest proposal can become a complex case. Second, although the Congress envisioned a harmonious relationship between the Service and PRC, disputes over the Commission's authority continually arise. So long as these disputes arise, the adversary relationship will continue and may subtly contribute to the overall length of PRC proceedings.

FORMAL TRIAL-LIKE PROCESS CAN RESULT IN LENGTHY AND EXPENSIVE PROCEEDINGS

Although PRC's enabling legislation gives the Commission authority to adopt rules for the conduct of its ratemaking and classification hearings, such rules must by law meet the minimum procedural requirements established by sections 556 and 557 of the Administrative Procedure Act. These requirements, often referred to as trial-like procedures, require on-the-record hearings and entitle parties to present their case orally or in writing, to submit rebuttal evidence, and to conduct cross-examination as necessary to assure a full and accurate disclosure of relevant facts. These proceedings are intended to provide an open forum for all interested parties to attempt to prove relevant facts and express their legal and policy views--either pro or con--on proposed Postal Service changes in rates or proposals from the Service or the Commission on mail classifications. The Parcel Post case included 16 participants represented by 24 attorneys, and the E-COM case included 33 participants represented by 75 attorneys.

The Commission designed its proposed hearing schedule for the Parcel Post and E-COM cases to consume at least 10 months. This initial schedule was distributed and discussed at the prehearing conferences which occurred almost 2 months after the Postal Service filed these proposals. Initially, PRC targeted to complete the Parcel Post case in 10 months and E-COM in 11.

Although the Commission contends that schedule length does not harm the Postal Service because temporary rates or temporary classification changes can be implemented in appropriate circumstances, those circumstances did not exist in either of the two cases. The Service planned to implement E-COM in December 1978,

but Western Union's failure to obtain FCC tariff approval prevented E-COM from becoming operational. Likewise, the United Parcel Service received a preliminary injunction against the Postal Service when it attempted to institute temporary rates in the Parcel Post case. Thus, the Postal Service did not benefit from the temporary rate provision for classification cases.

Section 556(d) of the Administrative Procedure Act, which PRC is bound by law to follow, places the burden of proof on the proponent of a rule or order. (The proponent is the Postal Service in rate cases, which only it can initiate; in classification cases it may be the Service or some other party.) Additionally the decision must be supported by "reliable, probative, and substantial evidence." PRC has issued rules reflecting this statutory standard of proof.

The Postal Service contends that PRC's evidentiary standards are too high. For example, the OOC's final brief in the Parcel Post case argued that the Postal Service was required to prove its case by a "preponderance of the evidence." The Service argued, however, that it was only required to satisfy a "substantial evidence test"--a less exacting standard.

For the Parcel Post case, the Postal Service initially filed a 403-page proposal with PRC. Before the case was decided, the Service filed another 254 pages of testimony and supporting workpapers. In addition, the Service received 790 interrogatories requesting additional information. The Service's principal competitor for parcel business, the United Parcel Service, filed 370 of the 790 interrogatories. The Commission does not prescreen the interrogatories to determine their relevance because of concern that the rejected interrogatories could later be used as a basis for a court to remand its decision.

A contrasting example

The Interstate Commerce Commission (ICC) regulates the rates charged by the Service's principal competitor for parcel business, the United Parcel Service. Although ICC rate proceedings generally appear to move faster than PRC proceedings and are not subject to the same statutory due process requirements, this contrast is not intended as a suggestion that PRC ought to conduct its affairs in the same manner as ICC, or that the Congress amend PRC's enabling legislation. We recognize that different public policy considerations govern the nature and scope of the postal ratemaking process. The regulated entities in the case of ICC are generally corporations competing in the private sector. In the case of PRC, the entity involved is a governmental corporation which, for certain aspects of its operations, holds a statutory monopoly.

To obtain a general rate increase, the United Parcel Service must file a tariff 30 days before the desired effective date. After the tariff is filed, any interested parties who believe the rates should be suspended may file protests with ICC explaining the grounds on which the protests are made. The protests must be filed at least 12 days before the rates' effective date so that the United Parcel Service has a chance to reply.

After receiving the proposed tariff, ICC prepares financial, cost, and economic analyses of the evidence provided in the proposal. If material justifying the proposed tariff is submitted, ICC analyzes this data; otherwise, ICC relies on the quarterly and annual reports routinely submitted to it by carriers. After reviewing any protests received and the analyses prepared, ICC must, within 30 days of filing, select one of the following options:

(1) Suspend the rate and investigate--ICC prevents the proposed rate from becoming effective until an investigation is completed. The investigation must be completed within 7 months or else the proposed rates could become effective.

(2) Not suspend the rate and investigate--The rate becomes effective on the proposed date but ICC conducts an investigation. If the investigation shows that the rate should be rejected, ICC will then rescind the new rates.

(3) Not suspend and not investigate--The rates become effective, and ICC does not conduct an investigation.

When ICC decides a case, it cannot approve an amount different from the proposal. This proposal is either accepted or rejected. Sometimes ICC rejects a proposal but states that it would not oppose a different rate increase. In such cases, the carrier can file, without prejudice from ICC, for the rate suggested by ICC.

ICC's regulatory process can move quickly. For example, on August 29, 1980, the United Parcel Service filed with ICC a 120-page justification for a general rate increase, requesting an overall rate increase of 3.7 percent over its May 1, 1980, rate increase. Two parties protested the proposed increases and 1 month later on September 30, 1980, ICC voted not to suspend or investigate the proposed rates. The increased rates as requested by United Parcel Service became effective October 1, 1980. In contrast, a total of 15 months passed before PRC denied the Postal Service's request for changes in parcel post services and rates.

The Commission strongly opposed the inclusion of the above ICC case as a "contrasting example." The Commission pointed out

that ICC encountered no problems with the United Parcel Service rate request, that ICC has the legal authority to choose whether to suspend or investigate a proposal, and that users of services have no right to a hearing under ICC statutes. The Commission believed that to compare a PRC case which aroused vehement controversy among the parties, contained complex issues, and required full trial-like hearings with an ICC case in which protests were minor and in which no hearings and no investigation occurred is not meaningful. (See app. IV, pp. 55 to 57.)

We recognize that the Postal Service and the United Parcel Service are not comparable entities in the strictest terms, but both entities do have some operations in common--package delivery, and in that context, they are competitors. Of course, the Postal Service, unlike the United Parcel Service, is not a private sector corporation and has never been afforded unilateral ratemaking authority. Until 1970 postal rates were established through legislation.

We provided this example merely to demonstrate the ease by which the Postal Service's principal competitor could receive a rate increase under a different statute and regulatory environment. We noted 11 United Parcel Service requests for rate increases filed between December 1975 and March 1981. Except for one proposal, rates were approved within 30-54 days. Only the December 1975 proposal took more than 8 months because ICC decided to suspend and investigate the proposed rates and refer the case to an administrative law judge. Therefore, our example is typical of United Parcel Service's recent experiences with ICC.

Participation in the regulatory process is expensive

Akin to complaints about the length of regulatory proceedings are those related to the costs involved. Large organizations or trade associations appear to be the only institutions that can afford to participate in the lengthy legal proceedings. Lawyers are hired to present the parties' cases, consultants are hired to prepare economic forecasts or economic analyses of the proposals, expert witnesses are hired to substantiate the parties' cases, numerous copies of each document must be prepared, and staff time must be devoted to monitoring legislative and regulatory hearings which may affect the ongoing proceeding.

Although the specific costs associated with the Parcel Post and E-COM cases have not been developed, the Postal Service estimated that costs associated with the most recent rate case (R80-1) were as follows:

Postal Service	$5,800,000
Intervenor A	1,000,000
Intervenors B	800,000
Intervenor C	175,000
4 Intervenors @ $150-200,000	700,000
6 Intervenors @ $ 50-100,000	450,000
6 Intervenors @ $ 25,000	150,000
30 Intervenors @ $ 2,500	75,000
Total	$9,150,000

The Commission estimates its costs in the rate case to total about $1.6 million. In presenting the above information we do not intend to imply that $10.7 million in relation to a rate case in which the Postal Service sought to increase its annual revenues by $3.7 billion is too little or too much. Rather, we point out this information to show the costs involved in processing a request for an increase in postal rates or a change in mail classification.

The intervenors we spoke with expressed concern about the cost of participating in PRC proceedings and the substantial number of copies required for each document submitted. For example, in the E-COM case, the Postal Service's initial and reply briefs alone totalled 229 pages. Thirty-one participants, the OOC, and PRC received a total of 57 copies of these two documents (representing 13,053 pages). In this case, 1,094 interrogatories were issued, of which 955 were answered in writing. Motions were initiated and decided on many of the unanswered interrogatories. Even if each interrogatory, answer, motion, and ruling were only 1 page in length (which is rarely the case), almost 120,000 pages were needed to satisfy the number of copies required by PRC's rules.

JURISDICTIONAL CONFLICTS CONTRIBUTE TO THE LENGTH OF COMMISSION PROCEEDINGS

Since the time PRC decided its first rate case in 1972, the Postal Service has contended that PRC oversteps its jurisdictional bounds by ruling on issues that are prerogatives of postal management. The E-COM case is an example. In this case, the Service contended that PRC overstepped its jurisdictional bounds by (1) considering the contractor selection process, and (2) classifying the E-COM system as experimental and establishing a termination date.

In considering the contractor selection process, PRC allowed the hearing participants to fully explore the fact that the system would be operated under a sole-source contract--16 of 29 hearing days were devoted to this issue. In retrospect PRC believed that the contractor selection issue was important but recognized that the Commission's final decision did not turn on the issue.

Similarly, the Governors of the Postal Service, on August 15, 1980, asked the Court of Appeals for the District of Columbia to set aside PRC's designation of the E-COM system as experimental. The Governors contended that the designation of a termination date for E-COM was beyond the PRC's role and constituted an improper effort to exercise management oversight of postal operations. The Court of Appeals agreed with the Postal Service and said "the Rate Commission exceeded its authority and strayed from its ratemaking and classification powers to intrude upon the management functions of the Board of Governors." Additionally, the Court said that the Congress intended the Board of Governors to have exclusive authority to manage the Postal Service.

In our earlier report 1/ on PRC activities we called for legislation to clarify PRC's role because of existing jurisdictional disputes. At that time, both the Service and PRC considered the issue mostly resolved and therefore indicated that legislation was unnecessary. Although some of those issues may have been eliminated, it seems fairly clear from the E-COM case that the line between what constitutes a Postal Service management prerogative and what constitutes a rate or classification matter can continue to prove elusive and become the subject of disputes. This can detract from a good, harmonious working relationship between the entities. To the extent that the two entities do not agree, the resulting deliberations, whether aired in the context of litigation or a PRC proceeding can consume time in the ratemaking process.

CONCLUSIONS

The expectation that PRC and the Service's Board of Governors would work in harmony in establishing postal rates, fees, and classifications has not been realized. It may be time for the Congress to again consider revising the system if it desires a more timely and harmonious ratemaking process.

If the Congress undertakes such an effort, it should recognize the time required to render an initial recommended decision can be lengthy under the trial-like procedures prescribed under

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1/"The Role of the Postal Rate Commission Should Be Clarified" (GGD-77-20, April 7, 1977).

the Administrative Procedure Act and in accord with PRC's enabling legislation. Given the number of participants and the sheer volume of data which must be provided, even the simplest proposal can become a complex and lengthy case. Secondly, the harmonious relationship the Congress envisioned will most likely not be realized if jurisdictional disputes continue.

AGENCY COMMENTS AND OUR EVALUATION

In commenting on our draft report, the Commission expressed disappointment because our report contained no analysis of the benefits to the public and the Postal Service of the particular cases studied. The Commission believed that the two cases are examples of the beneficial results of the rate and classification procedures mandated by the Congress. The Commission is troubled by our conclusion that it might be time for the Congress to consider revising the existing system to provide a more timely and harmonious ratemaking process without evaluating the benefits of the current process. (See app. IV, pp. 59 to 60.)

Commissioner Fritschler also commented that the two PRC decisions illustrate the merits of the adversary system and cautioned against viewing the hearing process as the culprit for prolonging the proceeding. (See app. V, pp. 66 to 69.) On the other hand, Commissioner Duffy, commenting specifically on the E-COM case, believed that the Postal Service and the public may encounter "exorbitant cost" because of the delay in the proceeding. (See app. VI, p. 71.)

As disclosed on page 3, Senator Stevens, in requesting a review of the two cases, expressed concern about the protracted delays experienced by the Postal Service in obtaining PRC decisions. Therefore, the objective of our review was to determine why it took the PRC as long as it did to render decisions on two specific Postal Service proposals. Judgements of the manner in which the decisions were reached and their worth exceeded the scope of our review.

The Postmaster General said that our report may give a reader, unfamiliar with the Postal Rate Commission, the impression that the proceedings take so long because the Commission is a victim of (1) burdensome requirements of the Administrative Procedure Act, (2) the great number of intervenors involved, (3) the massive amounts of data the Commission must consider, and (4) unresolved jurisdictional disputes between the Commission and the Service. Instead, the Postmaster General offered the following reasons for the Commission's delay:

--The Commission's own rules, most of which are not mandated by the Administrative Procedure Act.

--The Commission's willingness to indulge the Officer of the Commission in his obsession with detail.

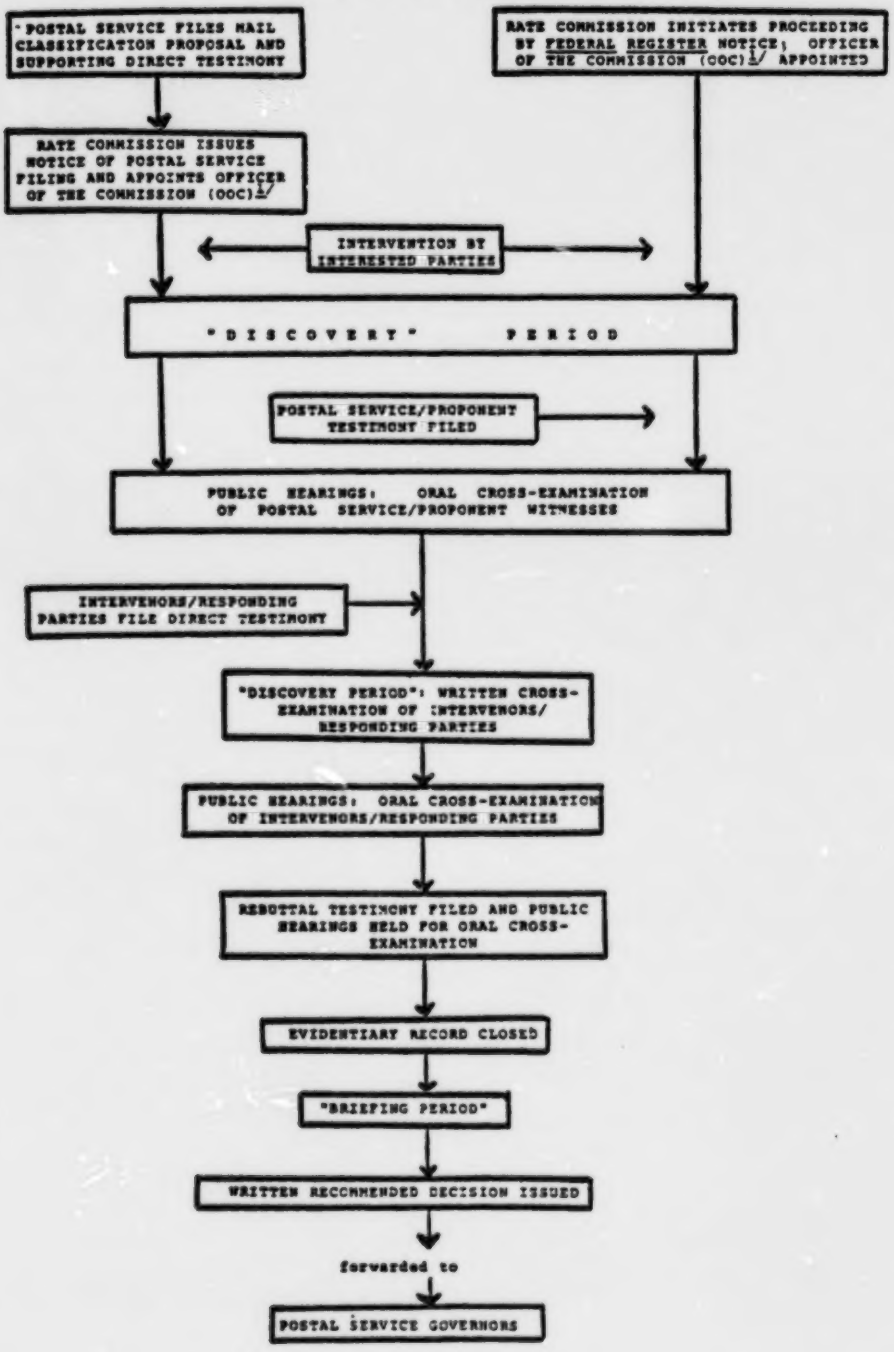
--The Commission's weak enforcement of evidentiary rules, which encourages lengthy digressions in the procedures.

--The Commission's inconsistency in rulings. (See app. VII.)

The Postmaster General also commented that jurisdictional disputes did not arise because jurisdictional boundaries are unclear, but because PRC refuses to respect established boundaries. (See app. VII, pp. 73 to 74.) The Postmaster General pointed to several recent cases where the courts have ruled that PRC overstepped jurisdictional bounds and issued opinions on matters that were exclusively Postal Service management prerogatives.

APPENDIX I

POSTAL RATE COMMISSION DECISIONAL PROCEDURE IN MAIL CLASSIFICATION CASES

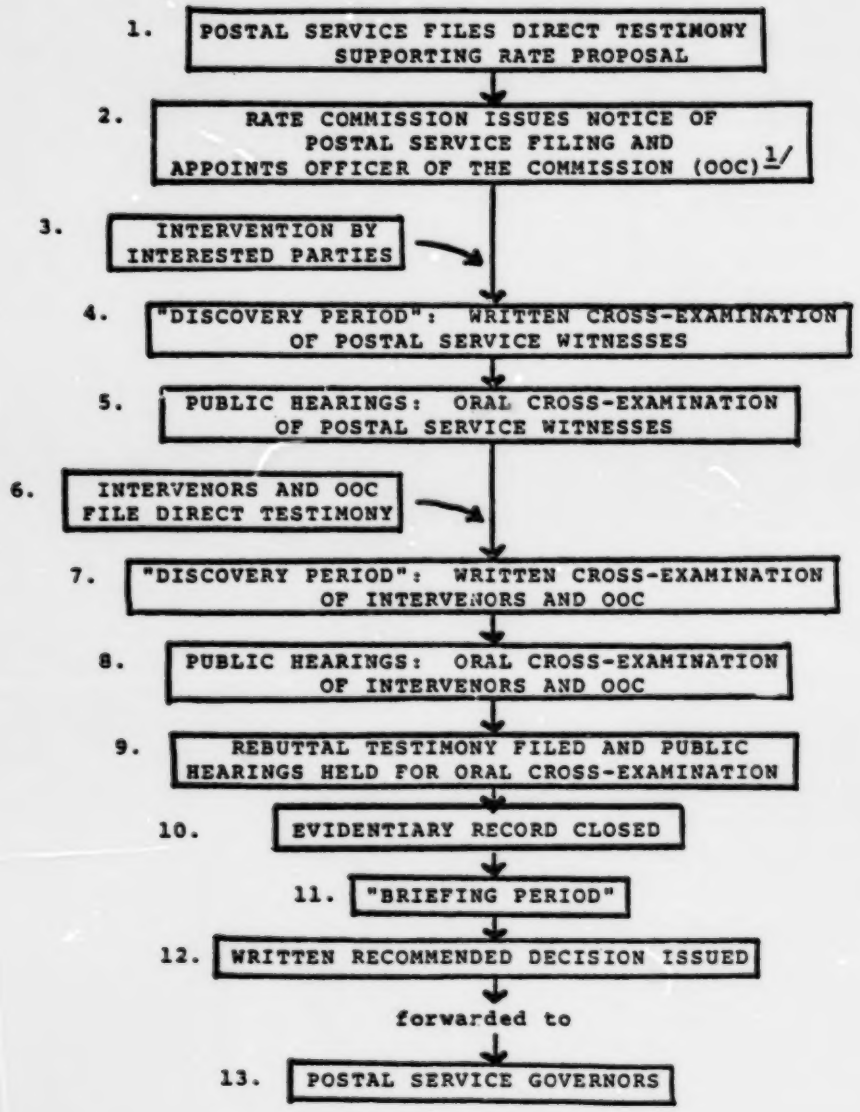

POSTAL SERVICE FILES MAIL CLASSIFICATION PROPOSAL AND SUPPORTING DIRECT TESTIMONY
RATE COMMISSION INITIATES PROCEEDING BY FEDERAL REGISTER NOTICE; OFFICER OF THE COMMISSION (OOC) 1/ APPOINTED
RATE COMMISSION ISSUES NOTICE OF POSTAL SERVICE FILING AND APPOINTS OFFICER OF THE COMMISSION (OOC) 1/
INTERVENTION BY INTERESTED PARTIES
"DISCOVERY" PERIOD
POSTAL SERVICE/PROPONENT TESTIMONY FILED
PUBLIC HEARINGS: ORAL CROSS-EXAMINATION OF POSTAL SERVICE/PROPONENT WITNESSES
INTERVENORS/RESPONDING PARTIES FILE DIRECT TESTIMONY
"DISCOVERY PERIOD": WRITTEN CROSS-EXAMINATION OF INTERVENORS/ RESPONDING PARTIES
PUBLIC HEARINGS: ORAL CROSS-EXAMINATION OF INTERVENORS/RESPONDING PARTIES
REBUTTAL TESTIMONY FILED AND PUBLIC HEARINGS HELD FOR ORAL CROSS-EXAMINATION
EVIDENTIARY RECORD CLOSED
"BRIEFING PERIOD"
WRITTEN RECOMMENDED DECISION ISSUED
forwarded to
POSTAL SERVICE GOVERNORS

1/This Office represents the interests of the general public before the Commission (See 39 USC §3624 a).

Note: A case may, at any appropriate stage, be disposed of on the basis of a settlement arrived at by the parties. See PRC rules of practice, §29 (39 CFR §3001.29). Disposition of a case on the basis of a stipulation settlement makes some or all of the formal hearing procedures unnecessary.

APPENDIX I

POSTAL RATE COMMISSION DECISION PROCEDURE IN RATE CASES


1. POSTAL SERVICE FILES DIRECT TESTIMONY SUPPORTING RATE PROPOSAL
2. RATE COMMISSION ISSUES NOTICE OF POSTAL SERVICE FILING AND APPOINTS OFFICER OF THE COMMISSION (OOC) 1/
3. INTERVENTION BY INTERESTED PARTIES
4. "DISCOVERY PERIOD": WRITTEN CROSS-EXAMINATION OF POSTAL SERVICE WITNESSES
5. PUBLIC HEARINGS: ORAL CROSS-EXAMINATION OF POSTAL SERVICE WITNESSES
6. INTERVENORS AND OOC FILE DIRECT TESTIMONY
7. "DISCOVERY PERIOD": WRITTEN CROSS-EXAMINATION OF INTERVENORS AND OOC
8. PUBLIC HEARINGS: ORAL CROSS-EXAMINATION OF INTERVENORS AND OOC
9. REBUTTAL TESTIMONY FILED AND PUBLIC HEARINGS HELD FOR ORAL CROSS-EXAMINATION
10. EVIDENTIARY RECORD CLOSED
11. "BRIEFING PERIOD"
12. WRITTEN RECOMMENDED DECISION ISSUED
forwarded to
13. POSTAL SERVICE GOVERNORS

1/ This Office represents the interests of the general public before the Commission (See 39 USC 3624 a).

Note: A case may, at any appropriate stage, be disposed of on the basis of a settlement arrived at by the parties. See PRC rules of practice, §29 (39 CFR §3001.29). Disposition of a case on the basis of a stipulation settlement makes some or all of the formal hearing procedures unnecessary.

Chronological Comparison of Procedural Phases in Three Simultaneous Postal Rate Commission Proceedings

	Parcel Post (MC78-1)		Third Class Presort (MC78-2)		E-COM (MC78-3)	
	Begin	End	Begin	End	Begin	End
USPS files request for Recommended Decision	9-08-78	-	9-08-78	-	9-08-78	-
Prehearing Phase						
PRC files notice in Federal Register	9-13-78	9-13-78	9-13-78	9-13-78	9-13-78	9-13-78
Petitions to intervene filed and granted	9-25-78	10-12-78	9-15-78	2-14-79	9-15-78	12-15-78
Officer of the Commission (OOC) appointed	10-12-78	10-12-78	10-12-78	10-12-78	10-12-78	10-12-78
Prehearing conference statements filed	10-19-78	10-23-78	10-19-78	10-20-78	10-19-78	10-23-78
Prehearing conference held	10-31-78	10-31-78	10-26-78	10-26-78	11-02-78	11-02-78
Initial and reply memorandum filed (note a)	-	-	-	-	11-21-78	12-18-78
PRC granted motions expanding the scope of the proceeding and filed notice in the Federal Register (note b)	-	-	11-22-78	12-27-78	-	-
Discovery Directed to the Postal Service						
Interrogatories filed and answered	10-31-78	5-24-79	10-26-78	1-05-79	11-03-78	3-05-79
Evidentiary Hearings Postal Service Witnesses	3-14-79	4-18-79	1-09-79	1-11-79	2-12-79	c/6-08-79
Intervenor and OOC Direct Testimony Filed	4-04-79	6-15-79	1-04-79	1-05-79	1-30-79	3-16-79
Discovery Directed to Intervenors and OOC						
Interrogatories filed and answered	5-11-79	8-07-79	1-15-79	3-19-79	2-16-79	7-12-79

APPENDIX II

	Parcel Post (MC79-1)		Third Class Presort (MC78-2)		E-COM (MC78-3)	
	Begin	End	Begin	End	Begin	End
Evidentiary Hearings Intevenor and OOC Witnesses	6-18-79	8-16-79	2-22-79	3-05-79	4-25-79	5-04-79
Rebuttal Testimony and Hearings	8-29-79	9-24-79	3-19-79	4-04-79	5-14-79	7-13-79
Testimony and hearings on first and second notices of inquiry issued by PRC (note d)	-	-	4-16-79	4-23-79	-	-
Briefing Period						
Initial and reply briefs filed	10-09-79	10-23-79	6-22-79	7-09-79	11-09-79	11-19-79
Oral argument held (note e)	-	-	-	-	11-21-79	-
PRC issues Opinion and Recommended Decision	-	12-05-79	-	11-28-79	-	12-17-79
Governor's consideration	1-07-80	2-06-80	12-03-79	12-04-79	1-07-80	2-22-80
Settlement conference and settlement agreement (note f)	-	-	1-23-80	2-15-80	-	-
PRC issues second Opinion and Recommended Decision	(g)	-	-	3-24-80	-	4-08-80
Governor's second consideration	-	-	-	4-20-80	4-20-80	8-15-80

Notes appear on page 42.

APPENDIX II

a/In the E-COM case, the Presiding Officer requested legal memoranda discussing legal issues to help determine the course of proceeding.

b/In the Third-Class proceedings, an OOC motion sought reconsideration of two proposals which were the subject of earlier cases, and a motion of a group of nonprofit organizations sought to include consideration of a presort discount for bulk third-class nonprofit mail. PRC granted the motions and published a notice in the Federal Register allowing additional parties to participate. After publication of the notice, the PRC granted six additional petitions for intervention.

c/A Postal Service witness was recalled and appeared in the evidentiary hearings on October 24, 1979.

d/In the Third-Class case, PRC issued two notices of inquiry seeking comments on a three-tier rate structure, as opposed to the two-tier rate structure proposed by the Postal Service.

e/Oral argument was not held in the Parcel Post or Third-Class proceedings.

f/In the Third-Class case, the parties held a settlement conference on January 31, 1980, and on February 15, 1980, six parties (including the Postal Service) submitted a settlement agreement to PRC. Two parties filed comments in opposition to the settlement agreement.

g/Although the Governors rejected PRC's Recommended Decision, they did not remand the case for reconsideration by PRC.

APPENDIX III

HISTORY OF POSTAL RATE COMMISSION RATE AND CLASSIFICATION CASES

Docket no. (note a)	Starting date	Finish date	Total time (note b)	Subject
Rate Cases				
R71-1	2-01-71	6-05-72	16m	Rate increases
R74-1	9-25-73	8-28-75	23m	Rate increases
R76-1	9-18-75	6-20-76	9m	Rate increases
R77-1	7-13-77	5-12-78	10m	Rate increases
R78-1	4-25-78	2-26-79	10m	Rate increases
R80-1	4-21-80	2-19-81	10m	Rate increases
R81-1	7-06-81	Pending	--	Attached Mail Rate Proceeding
Mail Classification Cases				
MC73-1	1-18-73	c/4-15-76	39m	Mail Classification changes
MC76-1 (note d)	6-03-76	1-17-77 - 6-17-78	24 1/2m	Classification changes in 1st-class mail
MC76-2 (note d)	6-03-76	4-25-77 - 12-07-78	30m	Classification changes in 2nd-class mail
MC76-3 (note d)	6-03-76	12-22-77 - 6-21-78	24 1/2m	Classification changes in 3rd-class mail

a/First 2 digits of the docket number represent the fiscal year in which the case began, and the hyphenated digit represents the sequential case in the same fiscal year.

b/The letter m represents months, and the time is represented in approximate number of months.

c/Phase I only. Phases II and III were re-docketed as MC76-1, -2, -3, -4, and -5.

d/In Dockets MC76-1, -2, -3, and -4, the Commission received several settlement proposals covering limited issues. After analysis of the record, the Commission approved some of these and embodied them in recommended decisions sent to the Governors. Over 30 recommended decisions resulted from Dockets MC76-1 through 4.

APPENDIX III

Docket no. (note a)	Starting date	Finish date	Total time (note b)	Subject
MC76-4 (note d)	6-03-76	1-12-77-7-13-78	25m	Classification changes in 4th-class mail
MC76-5	6-03-76	Pending	--	Basic mail classification reform schedule (matters formerly assigned to Phase III of Docket No. MC73-1)
MC77-1	11-10-76	10-06-77	11m	Legislative changes in mail classification schedule
MC77-2	7-11-77	2-16-78	7m	Minimum Size Prohibitions
MC78-1	9-08-78	12-05-79	15m	Parcel Post Matters
MC78-2	9-08-78	3-24-80	18 1/2m	Third-Class Carcier Route Presort Subclass
MC78-3	9-08-78	4-08-80	19m	Electronic Computer Originated Mail
MC79-1	11-30-78	7-19-79	7 1/2m	Minimum Height for Carrier Route
MC79-2	12-07-78	4-17-80	16m	Express Mail Metro Service
MC79-3	1-04-79	5-16-80	16m	Red Tag Proceeding
MC79-4	8-13-79	4-21-80	8m	Merchandise Return Service
MC80-1	5-27-80	Pending	--	E-COM Forms of Acceptance

APPENDIX III

Docket no. (note a)	Starting date	Finish date	Total time (note b)	Subject
MC81-1	1-08-81	Pending	--	Second-Class Mail Eligibility Requirements
MC81-2	2-05-81	Pending	--	Attached Mail Classification Proceeding
MC81-3	4-21-81	Pending	--	ZIP + 4
MC81-4	6-08-81	Pending	--	Express Mail Insurance

APPENDIX IV

POSTAL RATE COMMISSION
Washington, D.C. 20268

Janet D. Steiger
ACTING CHAIR

July 21, 1981

Mr. William J. Anderson
Director
General Government Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

This letter is in response to your request of July 1, 1981, for comments on the draft report entitled "A Case Study of Why Some Postal Rate Commission Decisions Took As Long as They Did." The Commission appreciates the opportunity to contribute to the report. We have several general comments to make as well as a number of specific detailed suggestions. Commissioners Duffy and Fritschler have written additional supplemental views which I have enclosed.

The first matter which warrants discussion is the report's failure to explain in any depth the purpose of the Postal Rate Commission, and the benefits derived from the procedural processes used by the Commission to develop its recommendations.

The report states (page 3) that its objective is "to determine whether the time required [in PRC proceedings] was necessary to satisfy the rights of due process of interested parties." A correct understanding of the functions and responsibilities of the Postal Rate Commission is essential to understanding whether the time expended in fulfilling these functions was necessary to satisfy the rights of interested parties. We believe that the main weaknesses of the draft report are that it fails to provide (1) an accurate statement of the Commission's functions and responsibilities, and (2) an analysis of the extent to which the Commission fulfilled its functions, and preserved the rights of interested parties, during the cases studied.

Under the heading "PRC's Role and Responsibilities" (page 1) GAO states only "the PRC serves as the legal forum for proposed changes . . . ." This single phrase does not reflect the several functions and important responsibilities the Commission bears.

Congress made it quite clear that the Postal Rate Commission was to be an expert body charged with independently evaluating presentations--including evidence intended to prove facts, as well as legal and policy views--by both the Postal Service and interested members of the public. The Commission must utilize its expertise to apply technical costing and important

APPENDIX IV

policy criteria to reach independent recommendations on postal rate and classification matters. The Commission does more than provide a forum--it is required to make detailed findings of fact based on the evidence of record; affirmatively evaluate numerous statutory factors; and balance the goal of a healthy postal service with the needs and rights of American individuals and businesses.

The legislative history of the Postal Reorganization Act emphasizes the need for an independent rate commission, which would balance these considerations fairly. The due process rights accorded to parties appearing before the Postal Rate Commission assure that all interested persons will have a fair opportunity to learn how Postal Service proposals will affect them, and offer suggestions or criticisms, before those proposals are implemented. The detailed opinions issued by the Postal Rate Commission evaluate both the position of postal management and the comments of the public, and provide the Governors with a carefully documented analysis of all factors material to its recommended decision. This process assures balanced consideration of all relevant issues, and has resulted in significant benefits to mailers and the Postal Service itself.

The draft report fails to recognize the three distinct roles Congress expected the Rate Commission, the Board of Governors, and the operating management of the Postal Service to play in developing postal rates and classifications. The process can be seen as follows:

(1) Operating management believes it needs to change rates and asks the Board of Governors to authorize a request to the Commission.

(2) The Board of Governors authorizes operating management to request a recommended decision on changed rates from the Postal Rate Commission. Before authorizing such a request the Governors are briefed on the reasons underlying operating management's desire to change rates, but do not examine the underlying support or solicit any comment from mail users.

(3) Postal Service management files a request with the Postal Rate Commission.

(4) The Postal Rate Commission solicits participation from interested persons, including an officer designated to represent the interests of the general public.

(5) Interested parties explore the validity of Postal Service management's rationale for changing rates, and offer information concerning the impact of changes on their situation during open public hearings.

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(6) The Commission evaluates the rationale of Postal Service management, as tested by parties appearing before it, and issues a recommended decision.

(7) The Governors, without participation by either the Postmaster General or his deputy, approve or reject the Rate Commission's decision, in accordance with the options set forth in 39 U.S.C. § 3625.

This chronological progression defines the complimentary functions of the Governors and the Rate Commission, two distinct bodies with separate, statutory areas of responsibility, both of which involve review of postal rates and services.

When the Board of Governors authorizes the Postal Service to seek a recommended decision on changes in rates or classifications, it does not perform a detailed analysis of the underlying support provided by operating management. It has no expert analytical staff of its own. Technical analysis of the rationale supporting operating management's belief that changes are necessary is performed by the Postal Rate Commission.

More important, in authorizing a request for change, the Board of Governors does not solicit comments from interested members of the public or evaluate evidentiary--or indeed any--presentations by persons likely to be affected by the potential changes. These functions are also performed by the Postal Rate Commission.

When the Postal Rate Commission issues a recommended decision, that decision is supported by an opinion which describes in detail the technical bases for the decision, analyzing the sufficiency of the evidence supporting any change, and analyzing the comments and evidence presented by all parties to the proceeding. The Governors then act on the Commission recommendation, using the opinion prepared by the Commission, which provides expert analysis of both the technical presentation made by operating management, and the evidence provided by interested parties, to reach a decision. These separate, but complementary responsibilities, constitute the partnership of the Governors and the Commission.

The Commission has distinct responsibilities separate from those of any other body. It provides expert technical analysis of factual matters and applicable theoretical concepts. It also provides the only opportunity for interested persons to present their views concerning potential rate and classification changes to an independent body. The importance of this latter function

cannot be overstated. Prior to postal reorganization, postal rates and services were established by Congress, and reflected the concerns of the public, as made known to its elected representatives.

The vast majority of time which elapses during a Postal Rate Commission proceeding is spent giving the Commission and interested parties an opportunity to understand and evaluate the basis for Postal Service proposals. The same section of legislative history cited in the introduction of the draft report emphasizes the need to provide an independent body, not preoccupied with management concerns, to verify the fairness of management proposals for obtaining revenues from the mailing public. The report states: 1/

> [T]he Postal Rate Commission shall be a body fully independent of the Board of Governors and fully independent of any influence whatsoever of the Postmaster General or members of his staff.
>
> . . . .
>
> In discharging the highly important responsibilities vested in the Commission, it must exercise its best judgment to ensure that all postal rates, fees, and classifications are reasonable and equitable, and to ensure that the rights of all mail users are protected . . . .

The Governors have recognized these responsibilities since the first, stating in their R71-1 decision

> We particularly appreciate the high level of competence that the Commission has demonstrated and the thoroughness and impartiality of its analysis of the rate issues. For the first time in the long history of postal ratemaking, any party with an interest in the rates for any class of mail has been given a full opportunity to have a fair hearing before an independent body that combines professional ratemaking expertise with broad authority to recommend, within the guidelines established by Congress, how the cost of providing postal service should be apportioned among the users of such services.

We believe that while the draft report describes events which transpired in two specific classification proceedings, it

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1/ Senate Report No. 91-912, at 13-14.

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fails to recognize that aspects of each of the proposals made by operating management met with strong opposition from intervening parties, and that the cost/service analyses which underlay operating management's proposals were found substantially deficient in many areas by the independent, expert Rate Commission. The Commission recommended that the proposals of operating management not be implemented in both cases, and the Governors, acting with benefit of the detailed supporting opinions provided by the Postal Rate Commission, chose not to implement either proposal offered by operating management.

Thus there is every indication in these two cases that the Governors and the Postal Rate Commission performed their separate functions in precisely the manner envisioned by Congress.

The functions of the Postal Rate Commission are functions not performed by the Governors, nor anyone else within the Postal Service. The Commission provides an opportunity for members of the public to question and criticize the rationale for proposals of Postal Service management, and then uses its technical expertise and independently evaluates those criticisms. It is completely understandable that the relationship between management and the independent Commission which is examining the bases for its proposals should occasionally be strained. Such tensions probably would not evoke any comment at all if they arose between the operating management of a gas utility or transit company and the utility commission before which management had to justify rate increases; an observer familiar with regulatory affairs would expect them. It is our view however, that the benefits to the mailing public, and to the Postal Service itself from having an independent organization review the bases for rate and classification proposals are well worth the time involved in such a review.

The report alludes to "bureaucratic conflicts" which are, with one exception which has been adjudicated, conflicts between the Postal Rate Commission and the operating management of the Postal Service. The report does not indicate that any such conflict delayed Commission proceedings except as necessary to provide due process rights to the public and otherwise fulfill Commission duties and responsibilities.

In a later section of this letter we will describe the types of additional material which would present a more balanced picture of the functions and benefits of Postal Rate Commission evaluation of management proposals. Before providing those comments, we would like to offer a number of more detailed suggestions dealing with specific language used in the report.

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Page 6, para. 6. The Commission's rules restrict appeals of presiding officer rulings to important questions, and situations where such an appeal will advance the termination of the proceeding or where subsequent review will provide an inadequate remedy. We suggest that language should be added to the last sentence of this paragraph so that it would read:

> Parties may, within 5 days, appeal to the presiding officer to request that all of the Commissioners consider a motion, however such appeals are appropriate only in extremely limited circumstances.

Pages 16-19. The draft report correctly identifies the "contractor selection" issue as a major time consuming consideration in the E-COM proceeding. See draft, pp. 16-19. The term "contractor selection" may be somewhat misleading, however, and a slightly more detailed explanation of what was involved in that issue would provide the reader with a more accurate understanding of the scope of the Commission's consideration of the Postal Service E-COM proposal.

The Postal Service justified the particulars of its proposal by explaining that Western Union was the only contractor capable of providing it with the means to implement an electronic mail system within a reasonable period of time. It claimed to have learned this during its contractor selection process. Intervenors believing that alternative technology was available which would provide less costly and technologically superior electronic transmission of messages sought to question the basis for Postal Service's conclusion. As a result, the process by which the Postal Service concluded that no other carrier or technology existed which could provide it with a feasible system for electronic transmission of messages was a central issue in the case.

To put it another way, the "contractor selection" issue could more properly be termed "the existence of alternative contractors" issue. Postal Service affirmatively stated that no alternatives existed, and parties questioned the Postal Service on how it arrived at this conclusion. Because the Postal Service stated that it had investigated alternatives while making its contractor selection, that process became the focus of intervenor discovery.

We believe that this situation could be more clearly explained in the section of the draft dealing with the contractor

selection issue.

The last full sentence on page 17, and the last sentence of the first paragraph on page 19 state that the OOC believed that the Postal Service was trying to withhold information. A reasonable implication is that Postal Service may have appeared to withhold information about its contracting process because it believed such an investigation was outside the scope of proper Commission investigation. But it should also be clear that OOC was seeking this information to determine whether Postal Service assertions that it had looked for reasonable alternatives to its proposal, and found none, were supportable. Since the Commission found that the Postal Service had not adequately investigated available alternatives, and that such alternatives did in fact exist (as shown by its recommendation of a system using an alternative technology), one might readily conclude that at least part of the reason for the Service's reluctance to provide information on its contractor selection process was because that information would discredit the basis for its claim that its proposal was the only feasible way to provide electronic mail service. The Commission found that the Postal Service's conclusion that its contractor selection process had satisfactorily investigated the availability of alternatives was at best, questionable, and that superior alternative technologies were readily available to the Postal Service. We suggest that it would be appropriate to add the following language as a new paragraph, after the third paragraph on page 19.

> "The Commission analyzed the relevant documents and testimony and decided 'that the Postal Service's conclusion that only Western Union could provide the necessary systems support, . . . is, at the least, questionable and furthermore raises concerns about the adequacy of their assessment of the telecommunications industry.' It is doubtful that an analysis of this issue could have been performed without the extensive cross-examination rights accorded to parties by § 556 of the Administrative Procedures Act.

This last conclusion is particularly important to any analysis of the E-COM proceeding. It must be remembered that both the Commission and the Governors decided that a system other than the one initially proposed by the Postal Service was in the best interests of the Service and the mailing public. If Postal Service statements that it had adequately investigated the availability of alternative technologies had gone unchallenged, it is quite possible that the public and the Postal Service would have been denied the benefits of the alternative system recommended by the Commission and adopted by the Governors.

Page 20, para. 2. GAO provides an "example" of an instance in which 78 days passed before requested information was provided. While the report states that not all motions to compel take this long to resolve, it does not state that this was an extraordinary instance not at all representative of motions practice before the Commission. We believe that this is not a true example, and that the report should indicate clearly that it is a worst-case situation. We suggest that this paragraph read:

> If the parties use the full range of legal maneuvers available under the Commission's rules, the process can consume a great deal of time. In the extreme case set out below, it took 78 days to obtain information, and while this particular example did not delay the proceeding, a series of motions during a particular phase of a case could cause that phase to take longer than originally scheduled.

In addition, we suggest that the table on page 21 not be identified as an example of motions practice. We suggest a title be added to read "Worst-Case Example of Protracted Discovery in the E-COM Case."

Page 22, paras. 1-3. This section, in our view, carries an implication that consideration of the OOC alternative proposal for electronic mail lengthened the case without any countervailing benefit. To the extent this implication may be present, we do not believe it is justified. The fact that it was the OOC's alternative system which the Commission recommended and the Governors accepted indicates that the consideration given to that proposal was beneficial. Further, as the draft recognizes, it is part of the OOC's duty to the public to present worthwhile alternatives, and the Commission is required to give them consideration just as it does those of any other party. In fact, the amount of time consumed in hearing the OOC proposal was no greater than the period scheduled at the beginning of the case, before the complexities of the OOC proposal were known. We believe that this should be recognized by adding the following sentence to the end of paragraph 3 of page 22:

> Nonetheless, the length of time between the submission of OOC testimony, which was deferred six weeks to allow for analysis of the Postal Service revisions, and the conclusion of hearings on Postal Service rebuttal to the OOC alternative proposals, was no longer than called for in the initial schedule issued by the Commission.

We also believe that there should be no implication that considering the OOC alternative was a time-consuming consequence of the statutory and administrative rules governing hearings which served no purpose. We would suggest that this section make it clear that the OOC proposal was in essence the system adopted by the Governors. This could be done by adding, following para. 3, the following:

> It should also be noted that the Governors accepted the OOC alternative system, although, as noted above, the matter was sent back to the PRC for clarification on some points. Thus, it appears that the consideration given to systems other than the one initially proposed by the Postal Service was worthwhile.

Page 25, para. 5. This is the concluding paragraph in a subsection titled "Other Factors Examined" (page 23). The paragraph in question discusses the dissents to the E-COM decisions. The unstated implication is that dissents by two Commissioners contributed to the length of time required to reach a decision in this matter.

The Commission unanimously rejects this implication. It is normal that members of collegial bodies will occasionally differ, and the existence of differing opinions does not delay the decisionmaking process. We suggest that the following clarification be added at the conclusion of this paragraph:

> Nonetheless, the Commission unanimously agreed that these differences did not extend the length of time necessary to issue the Commission's decisions.

Page 29, para. 1. First, we see no relevant nexus between a report on the time needed to complete two classification cases, and broad estimates of the costs of a subsequent omnibus rate case. Docket R80-1, by its very nature, involved complex costing and pricing issues affecting every class and subclass of mail service, and will therefore be far more costly than a normal classification proceeding. If the intervenors in the cases studied in this report expressed concerns about the cost of their participation, then estimates of those expenses would be relevant; however the unexplained cost estimates provided by the Postal Service do not relate to a comparable case and appear to be vastly overstated. We cannot, in the absence of any explanation of how these estimates were derived, agree with including them in a report which otherwise contains GAO analysis.

We agree with GAO's observation that the Postal Service's estimates, if accepted, do not of themselves imply that regulation

by the PRC is too expensive for the benefits gained. If this material is included in the report it could be evaluated more clearly if these estimated expenses are compared with the amount of additional revenues requested by Postal Service management as well as the increase recommended by the Commission. This could be done by changing the concluding sentence to read:

> In presenting the above estimates we do not intend to imply that such expenditures, in relation to a rate case in which Postal Service sought to increase its annual revenues by $3,749 million, and was authorized to increase its revenues by $2,800 million, are too little or too much, but rather that obtaining an increase in postal rates is an expensive process.

Having made these comments on matters of detail, we would make certain broader observations on the report. The first of them concerns the comparison of PRC procedures with certain Interstate Commerce Commission functions. Material on this subject appears in the draft report at pages 27-28.

We believe this comparison is totally inapposite, and should be deleted from the report. Any comparison of this nature should attempt to use similar situations, and the particular ICC case chosen is completely inappropriate and misleading.

The discussion of the schedule under which the ICC passed upon a United Parcel Service rate increase (p. 27) illustrates our point. As the draft observes, only two parties protested the rate increase in question, and the ICC--which has the legal authority to make the choice--decided not to suspend or investigate the increase.

Under those circumstances, it is not surprising that the UPS rate increases became effective relatively quickly. It should also be pointed out, however, that this expeditious procedure was feasible because the ICC identified no serious issues in the two protests which warranted suspension and further proceedings. The GAO report documents the fact that large numbers of parties sought to contest the two Postal Service proposals analyzed herein, and that both were found defective. It must also be recognized that the statutes establishing the Interstate Commerce Commission afford users of services for which rates are being increased no right to a hearing, or any other method of contesting the factual predicates for the rate increases. We believe this is a most significant point. To speak of suspension and nonsuspension as if they were no more than options available to the ICC, with no effect on the rights of third parties, is misleading.

Congress in enacting the Postal Reorganization Act evidently did not consider it appropriate to provide any mechanism by which the Commission could avoid holding hearings on rate changes;

had it intended to permit that alternative, it had ample precedent not only in the Interstate Commerce Act but also in the Natural Gas Act (15 U.S.C. § 717c) and the Federal Power Act (16 U.S.C. § 824d). The question is not solely one of "statutory due process requirements", as the draft terms them (page 27); we believe Congress's choice recognizes a fundamental distinction between ICC-type regulation and regulation of the Postal Service.

Historically, regulation of utility and transportation enterprises by an administrative agency has been legislatively imposed on an existing enterprise otherwise free (within certain common law constraints) to fix its own prices. It is natural, therefore, that the regulatory schemes enacted by Congress have recognized that the basic pricemaking powers of these enterprises remain intact except as modified by the legislation. This important historical point is fully discussed in Justice Harlan's opinion in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956). For example, the Court said at 350 U.S. 343:

> . . . the [Natural Gas] Act presumes a capacity in natural gas companies to make rates and contracts and to change them from time to time, but nowhere in the Act is either power defined. The obvious implication is that, except as specifically limited by the Act, the rate-making powers of natural gas companies were to be no different from those they would possess in the absence of the Act: to establish ex parte, and change at will, the rates offerd to prospective customers; or to fix by contract, and change only by mutual agreement, the rate agreed upon with a particular customer.

By contrast, the Postal Service and its predecessor the Post Office Department have never enjoyed unilateral ratemaking power. Until 1970, postal rates were made directly by legislation; after management through the administraton requested additional revenues. Since then, the PRC has been interposed between postal management's initial judgment that a rate change would be desirable, and the implementation of that change. There is no presumption as existed in the case of privately owned utilities (and was recognized in Mobile) that the enterprise enjoys full, unilateral ratemaking powers except as the regulatory statute qualifies them.

That being so, it becomes easier to see why a regulatory structure allowing for suspension or refusal to suspend did not appeal to the Congress that passed the Postal Reorganization Act. The presumption in the case of the Postal Service would naturally be that each change in postal rates should be scrutinized to the full, just as each change under earlier legislation had to undergo full examination by both Houses of

Congress. No good purpose would have been served by allowing the Commission to permit some changes to pass without the opportunity for hearing and analysis.

GAO was correct in observing (p. 27) that:

> . . . this contrast [between ICC and PRC proceedings] is not intended as a suggestion that PRC ought to conduct its affairs in the same manner as ICC. We recognize that different public policy considerations govern the nature and scope of the postal ratemaking process. The regulated entities in the case of the ICC are generally corporations competing in the private sector. In the case of the PRC, the regulated entity is a governmental corporation which, for certain aspects of its operations, hold a statutory monopoly.

However, we do not believe GAO gives sufficient weight to the major differences which this paragraph reflects.

Given that there is no possibility of the PRC's conducting a "bobtailed" proceeding similar to a refusal to suspend by the ICC or FERC, it seems to us that it would be more instructive (so far as investigating the efficiency of the PRC's procedures is concerned) to compare PRC cases with cases in other agencies which do result in full hearings. To compare a PRC case which aroused vehement controversy among the parties (as was true of both parcel post and E-COM cases), contained complex and (especially in E-COM) novel issues, and required full trial-type hearings; with an ICC case in which protests were minor and in which no hearings and no investigation occurred is not meaningful. This is especially true when there are other agencies (including the ICC) which do afford procedures similar to the PRC's, and which thus would have furnished a more suitable basis for comparison. 1/ We believe that if the comparison were conducted in this way, it would indicate that the time consumed by the cases this report focuses on was by no means excessive.

1/ For example, GAO itself has conducted a study of the management of electric rate cases under the Federal Power Act by the Federal Power Commission (now FERC). See GAO, Management Improvements Needed in the Federal Power Commission's Processing of Electric Rate-Increase Cases, EMD-76-9, September 7, 1976, pp. 14-22. GAO found that in 1973-75 the average time for processing such cases was 34 months; the one particularly focused upon in the report took more than five years. The processing time for cases settled (rather than fully-litigated) was 17 months on the average, and ranged from 3 to 49 months. Processing time for fully-litigated cases ranged from 21 to 63 months, average 34. GAO recommended management improvements, but did not question the appropriateness of the statutory structure.

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Finally, we turn to specific changes which will alleviate the misconception discussed at the beginning of this letter. Because GAO fails to recognize important functions of the Postal Rate Commission the report has miscast the causes of the length of time involved in Postal Rate Commission proceedings.

To provide a balanced report on why Postal Rate Commission cases may extend as long as they do should surely include an analysis of the role of the Postal Rate Commission, such as we provide at the beginning of this letter, and should explain the extent to which the time spent in considering a Postal Service proposal is spent in fulfilling the specific functions given to the Commission by Congress. Such information will enable readers to evaluate whether time is spent efficiently and whether the benefits to the public and the Postal Service warrant those expenditures of time.

Under the heading "PRC's Role and Responsibilities" (page 1) GAO states only that the PRC serves as the legal forum for proposed changes. This single phrase in no way captures the several functions and important responsibilities the Commission bears. Similarly, paragraph 2 of page 2 gives the impression that the Commission's only function is to allow interested persons to make statements in a formal atmosphere.

Because GAO fails to fully describe the several functions of the Commission, the report may give the inaccurate impression that the Commission took an excessive amount of time to perform its functions.

The statement which discusses the scope of the report (page 3) relates that Senator Stevens is properly concerned with whether the time involved in PRC proceedings is necessary and worthwhile. The report shows that in both cases studied, the Postal Service significantly altered the bases on which its proposals were grounded when subjected to in-depth questioning. We do not imply any negative connotation to this fact--rather we believe it shows that critical analysis at some point in the process is likely to improve the finished product, and may prevent the Postal Service from undertaking policies which might be detrimental to the public or the Service itself.

An analysis of the functions performed by the Commission might discuss the amount of time allocated to providing interested members of the public with an opportunity to understand the basis for the Postal Service proposals and to comment on how those proposals might impact upon the American

public.[1/] Similarly, the report could comment on the amount of time the Commission spent in review and analysis of technical issues and in drafting its opinion discussing both the Postal Service proposal and the comments and criticisms offered by members of the public. Such an analysis would enable a reader to evaluate whether the benefits derived from Postal Rate Commission consideration of the proposals of Postal Service management is worthwhile.

We are particularly disappointed that the report contains no analysis of the benefits to the public and the Postal Service of the particular cases studied. In the E-COM case, the Postal Service proposed to involve itself in a system which was shown to be technologically antiquated, unable to handle projected volumes, unnecessarily expensive to the user, and unlikely to provide free competitive entry from the private sector. An alternative system which avoided these pitfalls was recommended by the Commission and accepted by the Governors. The question GAO totally fails to address is whether these results are worth the expenditure of 15 months of time. We believe that the Commission performed useful functions well worth the time involved in considering Docket MC78-3.

Docket MC78-1 provides a different, yet no less important example of the benefits of Postal Rate Commission proceedings. In this case the Postal Service proposed to reclassify much of its fourth-class mail, thereby making it subject to significantly different rates. Following hearings in which both mailers and private businesses in competition with the Postal Service presented their views, the Commission determined that the technical basis for the Postal Service proposals was so inadequate that implementation of the changes would be unfair to mail users and competitors alike. An example is instructive. In its proposal the Postal Service requested authority to impose a "cost-based" $1.50 surcharge on "nonmachinable" mail. The Postal Service recently restudied this issue and concluded that a significantly smaller surcharge would be more than enough to cover costs. The Commission approved a 50¢ surcharge in Docket R80-1. Thus it can be seen that the initial Postal Service proposal would have overcharged mailers by $1.00 per piece, even before inflationary impacts are considered.

In sum, the two cases examined by GAO are examples of the beneficial results of the rate and classification procedures mandated by Congress in Chapter 36 of Title 39. Had GAO analyzed

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1/ In this regard the Office of Management and Budget has recently criticized the Postal Service for failing to consider the impact on the public in its analysis of a proposal to implement a nationwide nine digit ZIP code.

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Mr. William J. Anderson
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the functions of the Postal Rate Commission and the extent to which the application of statutory requirements benefited the public, its conclusions might be affected. We are troubled that it concluded it might be time for Congress to consider revising the existing system to provide "a more timely and harmonious" ratemaking process without evaluating the benefits of the current process.

The idea that changes in existing postal laws might facilitate the ratemaking process is not new however. The cover summary of GAO's 1977 analysis of the role of the Postal Rate Commission 1/ stated:

> The essential overall structure of the postal ratemaking process is sound and has been working. Nevertheless, a clear definition by Congress of the role of the Postal Rate Commission and refinements in the Postal Reorganization Act would improve the system of establishing postal rates.

We continue to agree with that finding. The 1977 Report noted (page 13) that a Commission on Postal Service had been established and charged with the task of evaluating the current ratemaking process. We consider it unfortunate that GAO has not evaluated the extent to which the recommendations of this blue ribbon panel would be likely to result in a more timely and harmonious ratemaking process. In particular, the Commission on Postal Service recommended that the Postal Rate Commission decisions should be final, a recommendation which we have testified would be likely to expedite the regulatory process.

We suggest that an appropriate way to proceed would be to have members of the Postal Rate Commission staff provide assistance to GAO personnel to identify what portions of the Commission proceedings were related to developing an understanding of the Postal Service's proposals and providing an opportunity for members of the public to consider and comment upon those proposals.

Thank you for your consideration.

Sincerely yours,

Janet D. Steiger

Janet D. Steiger
Acting Chair

1/ The Role of the Postal Rate Commission Should Be Clarified, GGD-77-20, April 7, 1977.

GAO Note: Page references refer to the draft report and do not necessarily correspond to the final report.

POSTAL RATE COMMISSION
Washington, D.C. 20268

A. Lee Fritschler
COMMISSIONER

July 21, 1981

Mr. William J. Anderson
Director
General Government Division
U. S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Anderson:

As my colleague Acting Chair Steiger indicates, in her letter of this date, I concur in her comments on the draft GAO report, "A Case Study of Why Some Postal Rate Commission Decisions Take So Long." Nonetheless, there are several additional points, not mentioned by Ms. Steiger, which are germane to the subject, and, in my opinion, require your careful consideration.

It is my opinion that the Draft Report takes a simplistic view of the administrative hearing process by focusing on the fact that the motion practice in the fourth-class and E-COM Dockets was time-consuming, without considering whether it performed a useful function. My experience has been that it is not motion practice per se, but its abuse which can be detrimental to the hearing process. Had the writers of the Draft Report independently reviewed the substance of the dozens of discovery-related motions and the responses thereto that were filed in the two proceedings, their conclusion probably would have been quite different. I am confident that they would have agreed with the Presiding Officer and the Commission that the Postal Service's position was unfounded in the overwhelming majority of cases, and would have concluded that the institution of motion practice served to protect the integrity of the hearing process by preventing a party from seeking to avoid or abuse discovery.

What has often been misrepresented as a bureaucratic struggle between two agencies was, in fact, substantive and procedural conflicts between opposing parties over issues which had a material bearing on the course of the proceedings. The fact that the Commission, upon an independent review of the facts and legal arguments, ruled against the Postal Service more often than not does not transform those conflicts into a bureaucratic dispute.

The primary cause of the delay in the fourth-class mail proceeding, Docket No. MC78-1, as discussed in PRC Order No. 280,

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was a combination of late-filed changes to testimony, and the failure by the Postal Service to comply with certain orders of the Presiding Officer. The docket was extended in Order No. 280, issued by the Commission upon a motion of United Parcel Service (UPS) to dismiss the proceeding, or, in the alternative, to declare that the case was filed on April 13, 1979 (the date upon which the last piece of revised testimony was submitted by the Postal Service) instead of September 8, 1978 (when the original testimony was filed). The Commission denied the UPS motion, but issued an order pursuant to 39 U.S.C. §3624(c)(2), finding the Postal Service had unreasonably delayed consideration of its Request and extending the proceeding by approximately five months, as opposed to a seven-month delay which would have resulted from granting the UPS motion.

The order was issued after the filing of a series of changes to the testimony of Postal Service witnesses, and a refusal by USPS to produce data required for the consideration of its request. Specifically, on October 26, 1978, seven weeks after the filing of its Request, the USPS filed notice that its volume witness, Mr. Belenky, had left the Postal Service, and that his testimony would be adopted by Dr. Marshall Kolin. Two and a half months later, however, on January 12, 1979, after the Commission and the parties had devoted considerable resources to discovery relating to the Belenky/Kolin testimony, USPS filed notice that it intended to withdraw that testimony and replace it with new volume testimony. On January 29, the Postal Service filed that new testimony, by witness Graham. But only on February 9th--five months after the filing of its original request--was additional, related testimony by witness Watts filed with the Commission. In addition, the changes to the volume testimony required associated changes to the testimony of Postal Service witnesses Green and Alenier, and the last of these were not submitted to the Commission until April 17, 1979. As a result of these comprehensive changes to testimony, cross-examination of Postal Service witnesses fell far behind schedule, and the preparation of opposing positions was greatly delayed.

The other key area in which the Postal Service's action led to delay in the proceeding was its refusal to comply with rulings of the Presiding Officer, and particularly one on a motion to compel a response to a key discovery request relating to parcel volume data by zone. The Postal Service's refusal to comply with the order delayed the Officer of the Commission in preparing and filing his case-in-chief, and frustrated the efforts of the parties to acquire a full understanding of the Postal Service's presentation.

Faced with this history, and particularly the Postal Service's failure to comply with lawful orders,1/ the Commission was forced to take action when United Parcel Service brought its motion to dismiss the proceeding in April, 1979. While I was not a member of the Commission at that time, I believe the decision to extend the proceeding rather than dismiss it was a wise one, for it preserved the investment in time and resources which had already been made by the various parties to the proceeding and the Commission. The extension decision permitted as efficient, comprehensive, and expeditious an examination of the Postal Service's revised request as was possible under the circumstances.

Turning to Docket No. MC78-3, Electronic-Computer Originated Mail, the delays which were incurred in the Commission proceeding can also be traced back to the inadequacy of the initial USPS request. The poor quality of the Postal Service filing could be seen in several areas. Reliable market data was nonexistent; the pricing schedule contained anomalies; and technical information supplied was sparse and inconsistent. As the discovery period progressed, it became apparent that there was little technical expertise within the Postal Service, and that those planning the service were relying almost totally on the Western Union Telegraph Company. The Postal Service had so little knowledge of the capabilities of Western Union's telecommunications system that its principal witness repeatedly had to turn to Western Union personnel for assistance.

Equally important was the Postal Service's apparent failure to consider the effect of E-COM on competition in the private sector before presenting the proposal to the Commission. Only after months of discovery and cross-examination did it become apparent that the Postal Service officials responsible for the planning of E-COM had made only a pro forma review of the telecommunications industry. As a result, their mistaken conclusion that Western Union Telegraph Company was the only communications carrier capable of implementing the E-COM concept within an acceptable time frame was based on a smattering of fragmented, inaccurate information. Only during the course of the PRC proceedings did it become apparent that the decision to contract with Western Union on a sole-source basis was made after a series of misleading oral and written presentations by middle management. As the record in the proceeding demonstrated, senior management

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1/ Under 39 U.S.C. § 3624(c)(2) a proceeding may be extended only if the Postal Service "has unreasonably delayed consideration of a request ... by failing to respond within a reasonable time to any lawful order of the Commission."

acted on the basis of mistaken assumptions and a dearth of accurate information regarding the potential of the various telecommunications common carriers. These facts were directly relevant to the Commission's consideration of the Postal Service's proposal to provide E-COM through a sole-source contract with Western Union, and it was only after months of procedural struggles, as I discuss below, that the preceding information was uncovered.

The poor quality of the Postal Service's preparation complicated and lengthened the proceeding in other ways as well. First, its principal witness was unable to answer dozens of discovery requests and oral cross-examination questions. As a result, it frequently was necessary to send him back to consult with other Postal Service officials and Western Union, and then recall him on another day to provide the answers to the questions he couldn't answer himself. Second, the anti-competitive nature of the Postal Service's proposed sole source arrangement with Western Union came came under sharp attack by the Officer of the Commission, whose task is to represent the interests of the general public, and also by the Department of Justice, competing telecommunications carriers, and the Federal Communications Commission. Had the effect of the Postal Service's proposal on competition been properly analyzed 1/ prior to the filing of its Request, the Commission would not have been required to start the task from scratch during the hearing process.

Another important factor in the E-COM proceeding was the unprecedented complexity of the issues facing the Commission. Whereas past proceedings had dealt with more or less traditional rate-making and classification concerns, E-COM presented a broad array of questions ranging from the technical capabilities of different computers and communications devices to competitive impact and the protection of privacy. The PRC also had to proceed carefully to avoid a jurisdictional conflict with the FCC, which had two E-COM-related proceedings on its docket. Two examples of the additional time required to address these matters are the Notices of Inquiry which the Commission issued during the summer of 1979, one regarding a Presidential Review Memorandum on the role of the Postal Service in the offering of electronic mail

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1/ It should be noted that at least one document in the Postal Service files, released only at a late stage in the proceeding, indicated that one of the goals of the Postal Service in contracting with Western Union had been to reduce competition. According to the document Western Union officials had indicated they would initiate a service which would compete with E-COM if they were not given the sole source contract. Postal Service officials advocated contracting with Western Union to avoid such a development.

services, and the other addressing the legal and technical problems associated with preserving the privacy of E-COM messages. 1/ The issuance of the privacy notice resulted in a direct public benefit because it brought to light an incorrect Postal Service interpretation of an FCC regulation. The Postal Service had indicated that it was planning to archive all E-COM messages for a period of six months, arguing that the practice was required by an FCC rule. The FCC, however, in its response, issued in the form of a ruling, stated that the referenced provision of its rules was not applicable to E-COM, and indicated that it would not be necessary to archive E-COM messages. As a result, the Notice of Inquiry made it possible for the Commission to eliminate the magnetic tape message storage capability from the E-COM system, at a savings of millions of dollars to the Postal Service.

The procedural maneuverings of the Postal Service in Docket No. MC78-3 also served to delay the proceeding. Most of the controversy was between either the Postal Service and the Officer of the Commission, or the Postal Service and Graphnet Systems, a private telecommunications carrier. Conflict between USPS and the OOC commenced during the discovery phase of the proceeding, when the OOC filed repeated Motions to Compel responsive answers to its interrogatories. The OOC's position was upheld by the Presiding Officer with respect to almost 90 percent of the interrogatories addressed, but whenever a Motion to Compel had to be filed to obtain a responsive answer to a proper discovery request the OOC was delayed in his efforts to obtain the sought-after information, and the preparation of his case was impeded. The Postal Service also filed numerous Motions to Compel during its discovery on the OOC, but the overwhelming majority of these requests were found to have been unsupported. Consideration of these motions, even though they were largely unfounded, also consumed valuable time and resources of the Commission and the parties.

The manner in which the Postal Service produced documents in response to discovery requests was yet another factor which impacted adverely on the Commission's ability to conclude the proceeding expeditiously. Several times during the course of the hearings, on motion of the Officer of the Commission or Graphnet Systems, the Presiding Officer requested or directed the Postal Service to perform searches of its files for relevant documents. Time and time again, after the Postal Service had

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1/ These two notices, which raised major national policy issues, were issued by the Commission in recognition of its responsibility to consider all aspects of the E-COM proposal. They were incorrectly characterized in the Draft Report as "motion practice."

indicated a complete search had been made, a new document would turn up, or USPS's principal witness would reference a document which had not been produced previously. Eleven months into the proceeding the Presiding Officer felt obliged to order one final, comprehensive search of the Postal Service's files for all relevant documents. To the surprise of most of the Commission and many of the parties in the proceeding, this search produced over 100 previously undisclosed documents, many of which had a direct bearing on issues which lay at the heart of the proceeding.

On a related matter, the Draft Report glosses over the controversy between the Postal Service and Graphnet Systems regarding the latter's request for testimony by the Postmaster General. After the principal USPS witness testifed that several key decisions had been made by the PMG personally, Graphnet requested his appearance to probe the reasoning underlying the decisions. The Presiding Officer and the Commission repeatedly sought to avoid calling the Postmaster General as a witness by requiring Graphnet to present the Postal Service with written questions to be answered by him, but to no avail. Satisfactory answers were never obtained, and the Commission was forced to reach its decision without the benefit of a full explanation of the PMG's actions. Again, the comprehensive and time-consuming motion practice related to this issue was not part of a bureaucratic struggle between the Postal Service and the PRC, but rather a controversy between two parties to the proceeding. The Presiding Officer offered one compromise after another, but the Postal Service repeatedly failed to provide the information which was sought by Graphnet.

Lastly, wholesale revisions to the testimony of one of the Postal Service's two witnesses also served to delay the Commission's consideration of the USPS request. Time does not permit me to recite the entire history of the five sets of revisions to the testimony of Postal Service costing witness Frank Vezzi, but suffice it to note that revisions were not made as soon as new data were available to the Postal Service, and that the series of revisions resulted in delays of over a month in the appearance of the Postal Service's witness and the filing of rebuttal testimony.

Several conclusions can be drawn from a review of the two dockets under consideration here. First, the adversary process takes time. Unlike an uncontested proceeding before the ICC, the evidentiary testing of factual assertions requires detailed preparation and analysis. When, as in the case of postal rate and classification decision-making, the system depends on objective consideration of conflicting positions, as presented by interested parties, decisions cannot be made overnight.

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Mr. William J. Anderson
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Proposals must be tested and studies carefully reviewed to determine whether they represent expert analysis or poorly thought out suggestions which are inconsistent with the public interest. Studies which take months or years to prepare and rely upon computers and sophisticated analytical techniques require time for proper review. Opposing parties must be given a fair opportunity to analyze the issues, test the Postal Service's proposals, and then formulate their own positions. The Postal Service, in turn, must have an opportunity to review the opposing proposals and respond to them before the Commission commences its deliberations and issues its decision on the basis of the entire record. When the Postal Service submits a Request which is not properly prepared delays will be encountered in the hearing process. This was the case in Docket Nos. MC78-1 and MC78-3.

The two decisions illustrate the merits of the adversary system. In the E-COM docket, the Governors of the Postal Service eventually rejected their own proposal and accepted the system embodied in the PRC decision--the only exception being their rejectior of the PRC's designation of the service as experimental. Leading Congressional figures, as well as the White House, also supported the PRC's decision, emphasizing that it provided a method of protecting competition in communications by avoiding the monopoly arrangement that the Postal Service had planned with Western Union. Moreover, the cost of the E-COM system was sharply reduced by accepting the PRC design in place of the Postal Service's original proposal. Whereas the Postal Service proposal had envisioned a Western Union owned and operated system, at a cost to the user of over $50 million, the cost of the PRC system, which performs essentially the same functions, was estimated at less than $10 million. To the mailer this represents a savings of $.04 to $.29 per letter, a substantial benefit to the public.

Of primary importance is the fact that the Commission's decision made it possible for the Postal Service to implement E-COM, whereas any other outcome would have likely led to protracted proceedings before the FCC and the Federal courts. Prior to the issuance of the PRC decision, the FCC had asserted jurisdiction over the Postal Service's E-COM proposal, and the jurisdictional ruling was before the Court of Appeals in December 1979. Following the issuance of our decision, the court case was dismissed as moot, upon motion of the FCC, and that agency indicated that it would not assert jurisdiction over E-COM as defined by the PRC decision. The PRC's action thus avoided lengthy interagency jurisdictional disputes and inevitable judicial review. Given the delays encountered due to Postal Service actions, our letting the proceeding run four months longer than originally contemplated was fully justified. By

taking the time necessary for full consideration of the issues raised by the Request, and resolving them in our Recommended Decision, we gave E-COM the greatest chance of success. In all probability, the implementation of E-COM will be speeded as a result of our decision because it permits a system to be installed without further time-consuming court battles. This could not be said had we adopted the Postal Service's original proposal.

The final decision of the Governors in the fourth-class mail proceeding can also be viewed as vindicating the hearing process. While the Governors formally rejected the Commission decision, their rejection had no real world impact because they decided not to appeal to the Federal courts. Had the Governors believed that the USPS position was well supported, and could prevail over the arguments found in the decision of the PRC, one would have expected them to pursue the matter by challenging the PRC decision in court. Instead, the Postal Service took no action, with the result that its proposal to adjust the fourth-class rate structure became a dead letter. Moreover, the $1.50 USPS-proposed surcharge for non-machineable parcels--which we found unsupported by the record--was replaced in Docket No. R80-1 by a USPS request for a $.60 surcharge, and we found only $.50 to be supportable. Had the $1.50 surcharge been implemented mailers would have been charged excessively, and the result undoubtedly would have been an adverse impact on Postal Service volumes.

When a governmental entity such as the USPS is granted a statutory monopoly in one area, independent agency oversight is desirable to safeguard the interests of competing private concerns and consumers in other closely-related areas. I believe this was the intent of Congress when it enacted the Postal Reorganization Act. The value of such independent oversight was amply demonstrated in Docket No. MC78-1, where United Parcel Service, the Postal Service's primary competitor in the fourth-class market, was the principal intervenor opposing the USPS request, and in Docket No. MC78-3, where Graphnet Systems--Western Union's principal competitor in the record message market--took the lead in opposing the sole source contract into which the Postal Service had entered.

The GAO Draft Report's concentration on institutional procedures is grossly inadequate and misleading. Only by examining the substance of the controversies which prolonged Dockets No. MC78-1 and MC78-3 is it possible to make an informed decision as to whether it is the administrative process which is at fault or

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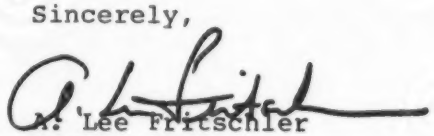
the efforts of one or more parties to circumvent or undermine that process. The Draft Report is silent on these issues. We, however, were required to undertake a thorough, substantive examination of the records during our fifteen months of deliberations on the two proposals, and it was our conclusion that much or all of the difficulty lay in irreparable defects in the two USPS requests and a failure by Postal Service management to comply with the rules and rulings issued by the the Commission in the fulfillment of our statutory responsibilities.

I suggest that GAO refocus its inquiry on the merits of the motion practice and related disputes in the two proceedings, and not merely report their existence. I am confident that such an independent analysis would lead to the conclusion that inadequate preparation by the Postal Service, failures on its part to comply with discovery requests, and, in the case of E-COM, an unwillingness to admit its errors and adopt a more compromising attitude, led to the prolongation of the proceedings. Should the hearing process be viewed as the culprit instead, the one vehicle which private concerns and the general public have for protecting their interests may well be lost.

Sincerely,



A. Lee Fritschler
Commissioner

APPENDIX VI

POSTAL RATE COMMISSION
Washington, D.C. 20268

James H. Duffy
COMMISSIONER

July 21, 1981

Mr. William J. Anderson
Director
General Government Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

My views on the draft report ("A Case Study of Why Some Postal Rate Commission Decisions Take So Long") differ from those of my colleagues so I am submitting these brief individual comments.

I agree with the report's conclusion that, insofar as the E-COM proceeding is concerned, the consideration of the contractor selection issue was a major lengthening factor in the proceeding.

As I pointed out in my dissent to the Commission's E-COM decision:

> "The contractor selection issue, which absorbed half this Commission's hearing time during this proceeding and then became defunct upon rescission of the Western Union contract, can be summarized in one quotation from the record. When asked why he had not pursued the legal remedies available to Graphnet (the complaining party)1/, its attorney responded: 'I guess in substantial part because we believed we knew it was a fruitless effort.' (Tr. 7329).
>
> 1/ The available legal remedy was an appeal to the Postal Service Board of Contract Appeals and, if rebuffed, an appeal to the U.S. Court of Claims; or, in the alternative, a direct appeal to a U.S. District Court."

In summary, this issue, which took up over half the hearing days in the protracted E-COM proceeding, was one which the Commission was not only (as became painfully evident) unqualified to deal with, but one which should never have been considered in this forum to begin with.

The other factor contributing to significant delay in the E-COM proceeding, and one for which the public has not yet been presented with a final bill, was the quixotic attempt to have a few inexperienced Commission staff members and consultants design, plan and develop an "alternate" telecommunications mail system for the Postal Service within the framework of a purely legal proceeding.

This diversion of the E-COM proceeding from the statutorily limited issue of approving or disapproving the Service's proposed new subclass of mail not only greatly delayed the proceeding but resulted in the elimination, through delay and frustration, of the Service's original E-COM proposal which would have broken Western Union's long-standing Mailgram monopoly and offered essentially the same service to the public at one-fourth the price (30¢ to 55¢ for E-COM versus $1.90 for Mailgram).1/

Instead, the delay (which was caused by the attempt to design an entirely new E-COM system) contributed significantly to the demise of the Service's inexpensive and proven electronic mail system, which had been tested and was operational in the beginning of 1979.

As a result, Western Union continues to enjoy a monopoly position for its overpriced Mailgram service (for which E-COM was the only direct potential competitor) and the Postal Service is left with an unworkable and unwanted electronic message system which will not be operational until at least 1982 (three years later than E-COM), and which already appears to be costing multiples more than predicted by this Commission.

The exorbitant cost to the public because of the delay in the proceeding, cannot be overstated. For the three year period to 1982 the public will be paying four times the amount for the same service they could have received from the original postal E-COM proposal. Moreover, if the alternate system, created and adopted by this Commission ever becomes operational, it may cost as much or more than the $1.90+ which Western Union charges for its Mailgram II service.

These factors which lie at the root of the delay in the E-COM proceeding and which have resulted in exorbitant costs to the public, were touched upon by the GAO report but, in my opinion, should be more thoroughly addressed.

Sincerely,

James H. Duffy

James H. Duffy
Commissioner

1/ Under E-COM, which the FCC described as essentially identical to Mailgram, Western Union would only have received 19.44¢/message.

APPENDIX VII

THE POSTMASTER GENERAL
Washington, DC 20260

July 30, 1981

Dear Mr. Anderson:

Thank you for the opportunity to comment on your draft report "A Case Study of Why Some Postal Rate Commission Decisions Take So Long."

After reviewing this report, we are concerned that a reader who has had no direct experience with the Postal Rate Commission (PRC) may get the impression that its proceedings take so long because the PRC is simply a victim of (1) burdensome requirements of the Administrative Procedure Act (APA), (2) the great number of intervenors involved in PRC proceedings, (3) the massive amounts of data the PRC must consider, and (4) unresolved jurisdictional disputes between the PRC and the Postal Service.

The APA should not bear the blame for the length of PRC proceedings. In our view, most of the PRC's delays come from (1) its own rules, most of which are not mandated by the APA, (2) its willingness to indulge the Officer of the Commission (OOC) in his obsession with detail, (3) its weak enforcement of evidentiary rules, which encourages lengthy digressions in the proceedings, and (4) its inconsistency in rulings. Federal and state courts that conduct trials under tighter strictures than the APA rarely take so long for the gathering and presentation of evidence.

While intervenors necessarily make some contributions, it is the PRC's own employees, including the OOC, rather than the large number of intervenors, that most often contributes to lengthy proceedings. Much of the massive data in PRC proceedings is unneeded and irrelevant. It is supplied only because the PRC's staff requires it or the OOC or an intervenor with a vested interest wants it and the PRC upholds the demand, however unreasonable.

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In the parcel post case you discuss, the quantity and quality of data the PRC wanted from the Postal Service, according to its recommended decision, would have required the Service to expend more money on data collection annually for the bulk parcel post sub-class than would have been recoverable through that sub-class.

Volume projections which the OOC demanded were not needed because the cost and revenue data presented by the Postal Service were computed on an individual piece basis. After the data sought by the OOC were finally developed, under protest, and at great cost in time and resources, the OOC made no discernible use of the information

An intervenor in the case who is a major competitor of the Postal Service sought data on the origins of the Service's parcel post volume, the customers we serve and other competitive information unnecessary for ratemaking or classification purposes. The Service properly 'resisted' - one of the delays cited in your report. Unfortunately, the OOC supported our competitor's demand.

Some of the testimony changes the report cites were simply updatings of data occasioned by the PRC's lengthy proceedings.

We regret the report did not evaluate the merits of the data demands imposed upon the Postal Service by the PRC, or consider whether our resisting improper discovery was justified. In MC79-3, a classification change case which the PRC itself initiated, it admitted it had no basis whatever for volume projections or costs projections. Yet it demands that we produce such data to support our case. Clearly, the PRC employs a double standard in determining what data are necessary.

We also regret that the report did not consider more fully the role of the OOC as a source of delay in other cases besides E-COM. Supposedly the OOC represents the general public before the PRC, but actually he does not actively solicit or usually receive comments from the public. As a practical matter, it is impossible to determine whose interest he does represent, other than his own. Yet the consideration of his alternative proposals and the satisfaction of his data demands account for much of the time spent in PRC proceedings.

As for jurisdictional disputes, these arise not because jurisdictional boundaries are unclear, but because the PRC refuses to respect established boundaries. Three recent appellate court decisions have reaffirmed the limits Congress placed on the PRC and which the PRC was trying to overreach, i.e. National Easter

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Seal Society v. United States Postal Service, No. 80-1491 (D.C. Cir. May 5, 1981); Dow Jones and Company, Inc. v. United States Postal Service, No. 80-2285 (D.C. Cir. May 22, 1981); and The Governors of the United States Postal Service v. The United States Postal Rate Commission, No. 80-1971 (D.C. Cir. May 29, 1981).

Finally, it should be noted that while the two PRC cases you studied took 15 months each, this was less time than most PRC cases have taken, as is illustrated in Appendix III of your report.

Sincerely,

William F. Bolger

Mr. William J. Anderson
Director, General Government Division
U.S. General Accounting Office
Washington, D. C. 20548

(221000)